

IDAHO ADMINISTRATIVE BULLETIN

September 7, 2016 -- Volume 16-9

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C.L. "Butch" Otter, Governor
Robert L. Geddes, Director, Department of Administration
Dennis Stevenson, Administrative Rules Coordinator
Bradley Hunt, Administrative Rules Specialist
Jason Shaw, Regulatory Analyst and Publishing Specialist

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Preface

The Idaho Administrative Bulletin is an electronic-only, online monthly publication of the Office of the Administrative Rules Coordinator, Department of Administration, that is published pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all official rulemaking notices, official rule text, executive orders of the Governor, and all legislative documents affecting rules that are statutorily required to be published in the Bulletin. It may also include other rules-related documents an agency may want to make public through the Bulletin.

State agencies are required to provide public notice of all rulemaking actions and must invite public input. This is done through negotiated rulemaking procedures or after proposed rulemaking has been initiated. The public receives notice that an agency has initiated proposed rulemaking procedures through the Idaho Administrative Bulletin and a legal notice (Public Notice of Intent) that publishes in authorized newspapers throughout the state. The legal notice provides reasonable opportunity for the public to participate when a proposed rule publishes in the Bulletin. Interested parties may submit written comments to the agency or request public hearings of the agency, if none have been scheduled. Such submissions or requests must be presented to the agency within the time and manner specified in the individual “Notice of Rulemaking - Proposed Rule” for each proposed rule that is published in the Bulletin.

Once the comment period closes, the agency considers fully all comments and information submitted regarding the proposed rule. Changes may be made to the proposed rule at this stage of the rulemaking, but changes must be based on comments received and must be a “logical outgrowth” of the proposed rule. The agency may now adopt and publish the pending rule. A pending rule is “pending” legislative review for final approval. The pending rule is the agency’s final version of the rulemaking that will be forwarded to the legislature for review and final approval. Comment periods and public hearings are not provided for when the agency adopts a temporary or pending rule.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is identified by the calendar year and issue number. For example, Bulletin **13-1** refers to the first Bulletin issued in calendar year **2013**; Bulletin **14-1** refers to the first Bulletin issued in calendar year **2014**. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. **13-1** refers to January 2013; Volume No. **13-2** refers to February 2013; and so forth. Example: The Bulletin published in January 2014 is cited as Volume **14-1**. The December 2015 Bulletin is cited as Volume **15-12**.

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

The **Idaho Administrative Code** is an electronic-only, online compilation of all final and enforceable administrative rules of the state of Idaho that are of full force and effect. Any temporary rule that is adopted by an agency and is of force and effect is codified into the Administrative Code upon becoming effective. All pending rules that have been approved by the legislature during the legislative session as final rules and any temporary rules that are extended supplement the Administrative Code. These rules are codified into the Administrative Code upon becoming effective. Because proposed and pending rules are not enforceable, they are published in the Administrative Bulletin only and cannot be codified into the Administrative Code until approved as final.

To determine if a particular rule remains in effect or whether any amendments have been made to the rule, refer to the **Cumulative Rulemaking Index**. Link to it on the Administrative Rules homepage at adminrules.idaho.gov.

THE DIFFERENT RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN

Idaho’s administrative rulemaking process, governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, comprises distinct rulemaking actions: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings incorporate or require all of these actions. At a minimum, a rulemaking includes proposed, pending and final rulemaking. Many rules are adopted as temporary rules when they meet the required statutory criteria and agencies must, when feasible, engage in negotiated rulemaking at the beginning of the process to facilitate consensus building. In the majority of cases, the process begins with proposed rulemaking and ends with the final rulemaking. The following is a brief explanation of each type of rule.

NEGOTIATED RULEMAKING

Negotiated rulemaking is a process in which all interested persons and the agency seek consensus on the content of a rule through dialogue. Agencies are required to conduct negotiated rulemaking whenever it is feasible to do so.

The agency files a “Notice of Intent to Promulgate - Negotiated Rulemaking” for publication in the Administrative Bulletin inviting interested persons to contact the agency if interested in discussing the agency’s intentions regarding the rule changes. This process is intended to result in the formulation of a proposed rule and the initiation of regular rulemaking procedures. One result, however, may also be that regular (proposed) rulemaking is not initiated and no further action is taken by the agency.

PROPOSED RULEMAKING

A proposed rulemaking is an action by an agency wherein the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a “Notice of Rulemaking - Proposed Rule” in the Bulletin. This notice must include:

- a) the specific statutory authority (from Idaho Code) for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority for or is occasioning the rulemaking;
- b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;
- c) a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided, however, that notwithstanding Section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or enforceability of the rule.
- d) if any document is incorporated by reference in the proposed rule, a brief written synopsis of why the incorporation is needed must be included in the notice of proposed rulemaking, along with a link to the electronic version of the incorporated material or information on how it can be obtained.
- e) the text of the proposed rule prepared in legislative format;
- f) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;
- g) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;
- h) the manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and
- i) the deadline for public (written) comments on the proposed rule.

Any proposed rulemaking that is submitted for publication in the Bulletin that would impose a fee or charge must be accompanied by a cost/benefit analysis that is prepared by the agency. This cost/benefit analysis must estimate, as reasonably as possible, the costs to the agency to implement the rule and the estimated costs that would be borne by citizens or the private sector. This analysis is filed with the Director of Legislative Services Office who then forwards it to the appropriate germane joint subcommittee assigned to review the promulgating agency’s proposed rules.

When incorporating by reference, the notice of proposed rulemaking must include a brief synopsis detailing the need to incorporate by reference any additional materials into the rule. The agency must also provide information regarding access to the incorporated materials. At a minimum, and when available, the agency must provide an electronic link to the documents that can be accessed on a web site or post this information on its own web site, or both. This link can be placed into the rule and activated once it is posted on the Coordinator’s web site.

As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rulemaking criteria for a proposed rule, the agency may adopt the pending rule. Because a proposed rule is not enforceable, it has no effective date, even when published in conjunction with a temporary rule that is of full force and effect. An agency may vacate (terminate) a rulemaking after the publication of a proposed rule if it decides, for whatever reason, not to proceed further to finalize the rulemaking. The publication of a “Notice of Vacation of Proposed Rulemaking” in the Bulletin officially stops the formal rulemaking process.

TEMPORARY RULEMAKING

Temporary rules may be adopted only when the governor finds that it is necessary for:

- a) protection of the public health, safety, or welfare; or
- b) compliance with deadlines in amendments to governing law or federal programs; or
- c) conferring a benefit.

If a rulemaking meets one or more of the above legal criteria and the governor determines that it is necessary that a rule become effective prior to receiving legislative authorization and without allowing for any public input, the agency may proceed and adopt a temporary rule. The law allows an agency to make a temporary rule immediately effective upon adoption. However, a temporary rule that imposes a fee or charge may be adopted only if the governor finds that the fee or charge is necessary to avoid immediate danger which justifies the imposition of the fee or charge.

A temporary rule expires at the conclusion of the next succeeding regular legislative session unless the rule is extended by concurrent resolution, is replaced by a final rule, or expires under its own terms.

The statute that regulates rulemaking in Idaho requires that the text of all proposed rulemakings publish in the Bulletin in order for the rulemaking to be valid. This is true for all temporary rules as well. In most cases, the agency wants the temporary rule to also become a final rule and in most of these cases, the temporary rule and the proposed rule text is identical. In this event, both rulemakings may be promulgated concurrently, however, they remain separate rulemaking actions. The rulemaking is published in the Bulletin as a temporary/proposed rule. Combining the rulemaking allows for a single publication of the text in the Bulletin.

An agency may, at any time, rescind a temporary rule that has been adopted and is in effect. The agency must publish a notice of rescission to effectively rescind the temporary rule. If the temporary rule is being replaced by a new temporary rule or if it has been published concurrently with a proposed rule that is being vacated, the agency, in most instances, will rescind the temporary rule.

PENDING RULEMAKING

A pending rule is a rule that has been adopted by an agency under regular rulemaking procedures and remains subject to legislative review before it becomes a final, enforceable rule.

When a pending rule is published in the Bulletin, the agency is required to include certain information in the "Notice of Rulemaking - Pending Rule." This includes:

- a) a statement giving the reasons for adopting the rule;
- b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;
- c) the date the pending rule will become final and effective and a statement that the pending rule may be rejected, amended or modified by concurrent resolution of the legislature;
- d) an identification of any portion of the rule imposing or increasing a fee or charge and a statement that this portion of the rule shall not become final and effective unless affirmatively approved by concurrent resolution of the legislature;
- e) the specific statutory authority for the rulemaking including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking; and
- f) a specific description, if applicable, of any negative fiscal impact on the state general fund greater

than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided however, that notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule.

Agencies are required to republish the text of the pending rule when substantive changes have been made to the proposed rule. An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule change is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject. It is not always necessary to republish all the text of the pending rule. With the permission of the Rules Coordinator, only the sections or their subparts that have changed from the proposed text are republished. If no changes have been made to the previously published text, it is not required to republish the text again and only the "Notice of Rulemaking - Adoption of Pending Rule" is published.

FINAL RULEMAKING

A final rule is a rule that has been adopted by an agency under the regular rulemaking procedures and is of full force and effect.

No pending rule adopted by an agency becomes final and effective until it has been submitted to the legislature for review and approval. Where the legislature finds that an agency has violated the legislative intent of the authorizing statute, a concurrent resolution may be adopted to reject the rulemaking in whole or in part. A "Notice of Rulemaking - Final Rule" and the final codified text must be published in the Bulletin for any rule that is partially rejected by concurrent resolution of the legislature. Unless rejected by concurrent resolution, a pending rule that is reviewed by the legislature becomes final and effective at the end of the session in which it is reviewed without any further legislative action. All pending rules that are approved by concurrent resolution become final and effective upon adoption of the concurrent resolution unless otherwise stated. In no event can a pending rule become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. However, a rule that is final and effective may be applied retroactively, as provided in the rule.

AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN

Internet Access - The Administrative Code and Administrative Bulletin are available on the Internet at the following address: adminrules.idaho.gov

SUBSCRIPTIONS AND DISTRIBUTION

For subscription information and costs, please contact the Department of Administration, Office of the Administrative Rules Coordinator, 650 W. State Street, Room 100, Boise, Idaho 83720-0306, telephone (208) 332-1820.

The Idaho Administrative Code - annual subscription on CD-ROM. The Code is an annual compilation of all final administrative rules and all enforceable temporary rules and also includes all executive orders of the Governor that have published in the Bulletin, all legislative documents affecting rules, a table of contents, reference guides, and a subject index.

The Idaho Administrative Bulletin - annual subscription available on individual CD-ROM sent out monthly. The Bulletin is an official monthly publication of the State of Idaho and is available for purchase on CD-ROM only. Yearly subscriptions or individual CD-ROM's are available for purchase.

Internet Access - The Administrative Code and Administrative Bulletin, and many other rules-related documents are available on the Internet at the following address: adminrules.idaho.gov

HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

Rulemaking documents produced by state agencies and published in the **Idaho Administrative Bulletin** are organized by a numbering schematic. Each state agency has a two-digit identification code number known as the **“IDAPA”** number. (The **“IDAPA”** Codes are listed in the alphabetical/numerical index at the end of this Preface.) Within each agency there are divisions or departments to which a two-digit **“TITLE”** number is assigned. There are **“CHAPTER”** numbers assigned within the Title and the rule text is divided among major sections that are further subdivided into subsections. An example IDAPA number is as follows:

IDAPA 38.05.01.200.02.c.ii.

“IDAPA” refers to Administrative Rules in general that are subject to the Administrative Procedures Act and are required by this act to be published in the Idaho Administrative Code and the Idaho Administrative Bulletin.

“38.” refers to the Idaho Department of Administration

“05.” refers to Title **05**, which is the Department of Administration’s Division of Purchasing

“01.” refers to Chapter **01** of Title 05, **“Rules of the Division of Purchasing”**

“200.” refers to Major Section **200**, **“Content of the Invitation to Bid”**

“02.” refers to Subsection **200.02.**

“c.” refers to Subsection **200.02.c.**

“ii.” refers to Subsection **200.02.c.ii.**

DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. Each rulemaking that is filed with the Coordinator is assigned a **“DOCKET NUMBER.”** The docket number is a series of numbers separated by a hyphen **“-”**, (**38-0501-1401**). Rulemaking dockets are published sequentially by IDAPA number (the two-digit agency code) in the Bulletin. The following example is a breakdown of a typical rule docket number:

“DOCKET NO. 38-0501-1401”

“38-” denotes the agency's **IDAPA** number; in this case the Department of Administration.

“0501-” refers to the **TITLE AND CHAPTER** numbers of the agency rule being promulgated; in this case the Division of Purchasing (**TITLE 05**), Rules of the Division of Purchasing (**Chapter 01**).

“1401” denotes the year and sequential order of the docket being published; in this case the numbers refer to the first rulemaking action published in **calendar year 2014**. A subsequent rulemaking on this same rule chapter in calendar year 2014 would be designated as **“1402”**. The docket number in this scenario would be **38-0501-1402**.

Within each Docket, only the affected sections of chapters are printed. (See **Sections Affected Index** in each Bulletin for a listing of these.) The individual sections affected are printed in the Bulletin sequentially (e.g. Section **“200”** appears before Section **“345”** and so on). Whenever the sequence of the numbering is broken the following statement will appear:

(BREAK IN CONTINUITY OF SECTIONS)

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2016

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
16-1	January 2016	*November 27, 2015	January 6, 2016	January 27, 2016
16-2	February 2016	January 8, 2016	February 3, 2016	February 24, 2016
16-3	March 2016	February 5, 2016	March 2, 2016	March 23, 2016
16-4	April 2016	March 4, 2016	April 6, 2016	April 27, 2016
16-5	May 2016	April 8, 2016	May 4, 2016	May 25, 2016
16-6	June 2016	May 6, 2016	June 1, 2016	June 22, 2016
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16-8	August 2016	July 8, 2016	August 3, 2016	August 24, 2016
16-9	September 2016	August 5, 2016	September 7, 2016	September 28, 2016
16-10	October 2016	**September 2, 2016	October 5, 2016	October 26, 2016
16-11	November 2016	October 7, 2016	November 2, 2016	November 23, 2016
16-12	December 2016	November 4, 2016	December 7, 2016	December 28, 2016

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2017

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17-1	January 2017	*November 25, 2016	January 4, 2017	January 25, 2017
17-2	February 2017	January 6, 2017	February 1, 2017	February 22, 2017
17-3	March 2017	February 3, 2017	March 1, 2017	March 22, 2017
17-4	April 2017	March 3, 2017	April 5, 2017	April 26, 2017
17-5	May 2017	April 7, 2017	May 3, 2017	May 24, 2017
17-6	June 2017	May 5, 2017	June 7, 2017	June 28, 2017
17-7	July 2017	June 9, 2017	July 5, 2017	July 26, 2017
17-8	August 2017	July 7, 2017	August 2, 2017	August 23, 2017
17-9	September 2017	August 4, 2017	September 6, 2017	September 27, 2017
17-10	October 2017	**September 1, 2017	October 4, 2017	October 25, 2017
17-11	November 2017	October 6, 2017	November 1, 2017	November 22, 2017
17-12	December 2017	November 3, 2017	December 6, 2017	December 27, 2017

****Last day to submit a proposed rulemaking before moratorium begins and last day to submit a pending rule to be reviewed by the legislature.***

*****Last day to submit a proposed rule in order to have the rulemaking completed and submitted for review by legislature.***

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IDAPA 01 - BOARD OF ACCOUNTANCY

01.01.01 - IDAHO ACCOUNTANCY RULES

DOCKET NO. 01-0101-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-204(1), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 511 is being added to emphasize that licensees who let their license lapse and elect not to have their license moved to a status of “inactive” or “retired” status may use the word “former” without violating Section 54-211 or 54-220, Idaho Code.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are simple in nature and were discussed with the Idaho Society of Certified Public Accountants and licensees without objections.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kent A. Absec, (208) 334-2490.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 22nd Day of July, 2016.

Kent A. Absec, Executive Director
Idaho State Board of Accountancy
3101 W. Main Street, Suite 201
P.O. Box 83720
Boise, Idaho 83720-0002
Phone: (208) 334-2490
Fax: (208) 334-2615
E-mail: kent.absec@isba.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 01-0101-1601
(Only Those Sections With Amendments Are Shown.)

511. FORMERLY LICENSED

Any person who was licensed by the Board and who chose to let their license lapse or had their license lapsed by the Board, may place the word “former” adjacent to their CPA or LPA title on any business card, letterhead, or any other document or device so long as at the time the license lapsed, the person was in good standing with the Board. ()

~~5172~~. -- 599. (RESERVED)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.02.14 - RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-1601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 71-111, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

To incorporate by reference the 2017 edition of the National Institute of Standards and Technology Handbook 44, specifications, tolerances, and other technical requirements for weighing and measuring devices. NIST documents are available online at: <http://www.nist.gov/pml/wmd/index.cfm>.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 6, 2016 Idaho Administrative Bulletin, **Vol. 16-7, pages 16-17**.

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not regulated by the federal government, because the federal government does not regulate specifications, tolerances and other technical requirements for weighing and measuring devices. The rule is, however consistent with national standards by the National Institute of Standards and Technology.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

ISDA does not anticipate any fiscal impact from the changes to be made to the rule during this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kevin Merritt, Section Manager at (208) 332-8692.

DATED this 4th Day of August, 2016.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd
PO Box 790
Boise, ID 83701
Phone: (208) 332-8500
Fax: (208) 334-2170

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.02 - RULES PERTAINING TO THE IDAHO COMMERCIAL FEED LAW

DOCKET NO. 02-0602-1601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 25-2710, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

To incorporate by reference information and updates contained in the 2017 Official Publication of the Association of American Feed Control Officials (AAFCO) as they pertain to the methodology and practice of conducting regulatory commercial feed registration and label review.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, pages 29-30](#).

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not regulated by the federal government. The federal government does not regulate commercial feeds. The rule is, however, consistent with the national standards of the Association of American Feed Control Officials.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

ISDA does not anticipate any fiscal impact from the changes to be made to the rule as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jared Stuart, Agriculture Section Manager at (208) 332-8620.

DATED this 4th Day of August, 2016.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd.
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8500
Fax: (208) 334-2170

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.06.12 - RULES PERTAINING TO THE IDAHO FERTILIZER LAW
DOCKET NO. 02-0612-1601
NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-604, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

To incorporate by reference information and updates contained in the 2017 Official Publication of the Association of American Plant Food Control Officials (AAPFCO) as they pertain to the methodology and practice of conducting regulatory fertilizer registration and label review.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, pages 31-32](#).

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not regulated by the federal government. The federal government does not regulate commercial fertilizers. The rule is, however, consistent with the national standards of the Association of American Plant Food Control Officials.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

ISDA does not anticipate any fiscal impact from the changes to be made to the rule as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jared Stuart, Agriculture Section Manager at (208) 332-8620.

DATED this 4th Day of August, 2016.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd.
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8500
Fax: (208) 334-2170

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.22 - NOXIOUS WEED RULES

DOCKET NO. 02-0622-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-2403, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this rulemaking is to add four (4) genera of plants to the Idaho noxious weed list including the entirety of the genera *Cytisus*, *Chamaecytisus*, and *Spartium*, including hybrids and cultivars of these genera.

Specific changes include: (1) adding all plants and plant parts in the genera of: *Cytisus*, *Genista*, *Spartium*, and *Chamaecytisus* to Idaho's Statewide Noxious Weed List under IDAPA 02.06.22.100; (2) removing *Cytisus scoparius* from the "Control" noxious weed list; and (3) defining "subtaxa" in IDAPA 02.06.22.010.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

There is no fee impact included in this proposed rule.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no fiscal impact anticipated as a result of this proposed rule.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Volume 16-7, Page 29](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd Knight, Administrator, Division of Plant Industries, at (208) 332-8620, or at Lloyd.knight@isda.idaho.gov. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 4th Day of August, 2016.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd.
P.O. Box 790
Boise, ID 83701
Phone: (208) 332-8500 / Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0622-1601
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

The Department adopts those definitions as set forth in Section 22-2402, Idaho Code, and in addition, adopts the following: (3-30-07)

01. Early Detection and Rapid Response (EDRR). Finding invasive plant species during the initial stages of colonization and then responding within the same season to initiate eradication of the invasive plant species. (3-30-07)

02. Implements of Husbandry. Every vehicle, including self-propelled units, designed or adapted and used exclusively in agricultural, horticultural, dairy and livestock growing and feeding operations when being incidentally operated as an implement of husbandry. Such implements include, but are not limited to, combines, discs, dry and liquid fertilizer spreaders, cargo tanks, harrows, hay balers, harvesting and stacking equipment, pesticide applicator equipment, plows, swathers, mint tubs and mint wagons, and farm wagons. A farm tractor when attached to or drawing any implement of husbandry shall be construed to be an implement of husbandry. Implements of husbandry do not include semi trailers, nor do they include motor vehicles or trailers, unless their design limits their use to agricultural, horticultural, dairy or livestock growing and feeding operations. (3-30-07)

03. Subtaxa(on). A supplementary piece of identifying information in a plant's or animal's scientific name. ()

(BREAK IN CONTINUITY OF SECTIONS)

100. NOXIOUS WEEDS - DESIGNATIONS.

The weeds listed on the Statewide Prohibited Genera, EDRR, Containment, and Control lists are hereby officially designated and published as noxious. (3-30-07)()

01. Statewide PROHIBITED GENERA Noxious Weed List. All plants and plant parts in the genera of: Cytisus, Genista, Spartium, and Chamaecytisus additionally including "all" subtaxa of these plant genera are prohibited in Idaho. ()

a. Weeds listed in the Prohibited Genera list may exist in varying populations throughout the state. The concentration of these weeds is at a level where control and/or eradication may be possible. A written plan for weeds on the Statewide Prohibited Genera Noxious Weed List shall be developed by the control authority that specifies active control methods to reduce known populations in not more than five (5) years. The plan shall be available to the Department upon request. ()

042. Statewide EDRR Noxious Weed List.

Common Name	Scientific Name
1. Brazilian Elodea	1. <i>Egeria densa</i>
2. Common/European Frogbit	2. <i>Hydrcharis morsus-ranae</i>
3. Fanwort	3. <i>Cobomba caroliniana</i>
4. Feathered Mosquito Fern	4. <i>Azolla pinnata</i>
5. Giant Hogweed	5. <i>Heracleum mantegazzianum</i>
6. Giant Salvinia	6. <i>Salvinia molesta</i>

Common Name		Scientific Name	
7.	Hydrilla	7.	<i>Hydrilla verticillata</i>
8.	Iberian Starthistle	8.	<i>Centaurea iberica</i>
9.	Policeman's Helmet	9.	<i>Impatiens glandulifera</i>
10.	Purple Starthistle	10.	<i>Centaurea calcitrapa</i>
11.	Squarrose Knapweed	11.	<i>Centaurea triumfetti</i>
12.	Syrian Beancaper	12.	<i>Zygophyllum fabago</i>
13.	Tall Hawkweed	13.	<i>Hieracium piloselloides</i>
14.	Variable-Leaf-Milfoil	14.	<i>Myriophyllum heterophyllum</i>
15.	Water Chestnut	15.	<i>Trapa natans</i>
16.	Water Hyacinth	16.	<i>Eichhornia crassipes</i>
17.	Yellow Devil Hawkweed	17.	<i>Hieracium glomeratum</i>
18.	Yellow Floating Heart	18.	<i>Nymphoides pelata</i>

If any of the above listed plants (Subsection 100.042) are found to occur in Idaho, they shall be reported to the Department within ten (10) days following positive identification by the University of Idaho or other qualified authority as approved by the Director. These weeds shall be eradicated during the same growing season as identified. (3-25-16)()

023. Statewide Control Noxious Weed List.

Common Name		Scientific Name	
1.	Black Henbane	1.	<i>Hyoscyamus niger</i>
2.	Bohemian Knotweed	2.	<i>Polygonum X bohemicum</i>
3.	Buffalobur	3.	<i>Solanum rostratum</i>
4.	Common Crupina	4.	<i>Crupina vulgaris</i>
5.	Common Reed (Phragmites)	5.	<i>Phragmites australis</i>
6.	Dyer's Woad	6.	<i>Isatis tinctoria</i>
7.	Eurasian Watermilfoil	7.	<i>Myriophyllum spicatum</i>
8.	Giant Knotweed	8.	<i>Polygonum sachalinense</i>
9.	Japanese Knotweed	9.	<i>Polygonum cuspidatum</i>
10.	Johnsongrass	10.	<i>Sorghum halepense</i>
11.	Matgrass	11.	<i>Nardus stricta</i>
12.	Meadow Knapweed	12.	<i>Centaurea debeauxii</i>
13.	Mediterranean Sage	13.	<i>Salvia aethiopsis</i>
14.	Musk Thistle	14.	<i>Carduus nutans</i>
15.	Orange Hawkweed	15.	<i>Hieracium aurantiacum</i>
16.	Parrotfeather Milfoil	16.	<i>Myriophyllum aquaticum</i>

Common Name		Scientific Name	
17.	Perennial Sowthistle	17.	<i>Sonchus arvensis</i>
18.	Russian Knapweed	18.	<i>Acroptilon repens</i>
19.	Scotch Broom	19.	<i>Cytisus scoparius</i>
20.	Small Bugloss	20.	<i>Anchusa arvensis</i>
21.	Vipers Bugloss	21.	<i>Echium vulgare</i>
22.	Yellow Hawkweed	22.	<i>Hieracium caespitosum</i>

Weeds listed in the control list are known to exist in varying populations throughout the state. The concentration of these weeds is at a level where control and/or eradication may be possible. A written plan for weeds on the Statewide Control Noxious Weed List shall be developed by the control authority that specifies active control methods to reduce known populations in not more than five (5) years. The plan shall be available to the Department upon request.

(3-29-10)

034. Statewide Containment Noxious Weed List.

Common Name		Scientific Name	
1.	Canada Thistle	1.	<i>Cirsium arvense</i>
2.	Curlyleaf Pondweed	2.	<i>Potamogeton crispus</i>
3.	Dalmatian Toadflax	3.	<i>Linaria dalmatica ssp. dalmatica</i>
4.	Diffuse Knapweed	4.	<i>Centaurea diffusa</i>
5.	Field Bindweed	5.	<i>Convolvulus arvensis</i>
6.	Flowering Rush	6.	<i>Butomus umbellatus</i>
7.	Hoary Alyssum	7.	<i>Berteroa incana</i>
8.	Houndstongue	8.	<i>Cynoglossum officinale</i>
9.	Jointed Goatgrass	9.	<i>Aegilops cylindrica</i>
10.	Leafy Spurge	10.	<i>Euphorbia esula</i>
11.	Milium	11.	<i>Milium vernale</i>
12.	Oxeye Daisy	12.	<i>Leucanthemum vulgare</i>
13.	Perennial Pepperweed	13.	<i>Lepidium latifolium</i>
14.	Plumeless Thistle	14.	<i>Carduus acanthoides</i>
15.	Poison Hemlock	15.	<i>Conium maculatum</i>
16.	Puncturevine	16.	<i>Tribulus terrestris</i>
17.	Purple Loosestrife	17.	<i>Lythrum salicaria</i>
18.	Rush Skeletonweed	18.	<i>Chondrilla juncea</i>
19.	Saltcedar	19.	<i>Tamarix sp.</i>
20.	Scotch Thistle	20.	<i>Onopordum acanthium</i>
21.	Spotted Knapweed	21.	<i>Centaurea stoebe</i>
22.	Tansy Ragwort	22.	<i>Senecio jacobaea</i>

Common Name		Scientific Name	
23.	White Bryony	23.	<i>Bryonia alba</i>
24.	Whitetop (Hoary Cress)	24.	<i>Cardaria draba</i>
25.	Yellow Flag Iris	25.	<i>Iris pseudocorus</i>
26.	Yellow Starthistle	26.	<i>Centaurea solstitialis</i>
27.	Yellow Toadflax	27.	<i>Linaria vulgaris</i>

Weeds listed in the containment noxious weeds list are known to exist in various populations throughout the state. Weed control efforts may be directed at reducing or eliminating new or expanding weed populations while known and established weed populations, as determined by the weed control authority, may be managed by any approved weed control methodology, as determined by the weed control authority. (3-29-10)

0-4.5. Designation of Articles Capable of Disseminating Noxious Weeds. The following articles are designated by the Director as capable of disseminating noxious weeds: (7-1-93)

- a. Construction equipment, road building and maintenance equipment, and implements of husbandry. (3-30-07)
- b. Motorized vehicles such as, all-terrain vehicles, motorcycles, and other off-road vehicles and non-motorized vehicles such as bicycles and trailers. (3-30-07)
- c. Grain and seed. (7-1-93)
- d. Hay, straw and other material of similar nature. (7-1-93)
- e. Nursery stock including plant material propagated for the support of aquarium, pet, or horticultural activities. (3-30-07)
- f. Feed and seed screenings. (7-1-93)
- g. Fence posts, fencing and railroad ties. (7-1-93)
- h. Sod. (7-1-93)
- i. Manure, fertilizers and material of similar nature. (7-1-93)
- j. Soil, sand, mulch, and gravel. (3-30-07)
- k. Boats, personal watercraft, watercraft trailers, and items of a similar nature. (3-30-07)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.31 - NOXIOUS WEED FREE FORAGE AND STRAW CERTIFICATION RULES

DOCKET NO. 02-0631-1602

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 22-101(3), 22-2403, 22-2411, 22-2412, and 22-2413.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The ISDA is a member of a national standards organization called the North American Invasive Species Management Association (NAISMA). NAISMA has standards for Noxious Weed Free Forage and Straw (NWFFS) products. NAISMA changed its NWFFS standards on February 1, 2016 and the ISDA will not be able to certify forage crops to the NAISMA standards until these rules are amended. Idaho has multiple manufacturers of NWFFS products (forage cubes & pellets) and these proposed changes are needed to ensure these products can only be certified using the most current standards rather than the NAISMA standards that as currently written in this rule.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

There are no fees being imposed or changed in this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

There is no negative impact to the state general fund as a result of this proposed rule.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, **Volume 16-7, Page 45**.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dan Safford, Program Specialist, Invasive Species, at (208) 332-8592, or at dan.safford@isda.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 4th Day of August, 2016.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2280 Old Penitentiary Road

P.O. Box 790, Boise, ID 83701
Phone: (208) 332-8500
Fax: (208) 334-2170

THE FOLLOWING IS THE TEXT OF THE PROPOSED RULE FOR DOCKET NO. 02-0631-1602
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

The definitions found in Section 22-2402, Idaho Code, apply to this chapter. In addition, as used in this chapter:

(7-1-94)

01. Agent. Any instrumentality or entity authorized by the director of the department, and acting on behalf of the department, to administer the provisions of this rule. Any designated agent shall act in an official capacity for the department and under the supervision of the director of the department. The principal purpose of the agent is to establish, conduct, and maintain a uniform and reasonable system of inspection and certification of forage and straw crops to determine if such crops are noxious weed free. (3-19-07)

02. Approved Inspector. An individual who has been accredited by the department or by the department's agent in the noxious weed free forage and straw certification program. (3-19-07)

03. Bale. A mechanically compressed package of forage or straw bound by string or wire, or other binding material. (3-19-07)

04. Bale Tag. A tag or label which is attached to the string or wire, or other binding material of a bale of certified forage or straw, and identifies the bale as being certified noxious weed free. (3-19-07)

05. Certificate of Inspection. A record of inspection issued by an approved inspector that states the results of a field or commodity inspection. The certificate shall document that the inspected field or commodity is Idaho State Noxious Weed Free, North American Noxious Weed Free, or that the field or commodity contains noxious weeds. (5-8-09)

06. Certification. The process whereby an approved inspector conducts field or commodity inspections to determine that the field or commodity is noxious weed free. (3-19-07)

07. Certification Markings. Bale tags, purple and yellow colored twine, compressed forage bale binding material, and forage cubes/pellets container tags/labels. (4-4-13)

08. Certified Compressed Forage Bale Binding Material. An ISDA approved binding material which is attached to a compressed forage bale of certified noxious weed free forage and identifies the bale as being certified to the North American Standards. (5-8-09)

09. Compressed Forage Bale. A bale that has been twice compressed, once in the field by a forage baler and then recompressed a second time and bound by string, wire or other binding material. (3-19-07)

10. Department. The Idaho State Department of Agriculture. (3-19-07)

11. Field. The land on which a forage or straw crop is grown and is not divided by streams, public roads, other crops, or other barriers. (3-19-07)

12. Field Certification Inspection. An on-site inspection of forage or straw in the field, and areas adjacent to the field, for the presence of noxious weeds. The inspection shall be conducted prior to cutting or harvesting. (3-19-07)

13. Forage. Alfalfa, grain, and grass hay, and/or combinations of alfalfa, grain, or grass hay; the term "forage" includes forage cubes, compressed forage bales, and pellets. (3-19-07)

14. Forage Cubes. Forage that is harvested from a field certified to North American Standards and is mechanically compacted into wafers or cubes. (3-19-07)

15. **Forage Cube/Pellet Tag.** A tag, label, or statement which is attached or printed on a container of certified noxious weed free forage cubes or pellets, and identifies the container as being certified to the North American Standards. (5-8-09)
16. **Idaho State Noxious Weed Free.** Forage and straw inspected for weeds designated by the director as noxious as defined in Section 22-2402(15), Idaho Code, and determined to be free of such weeds. (3-19-07)
17. **Idaho State Noxious Weed Free Standards.** Forage and straw that meets the requirements Idaho State Noxious Weed Free. (3-19-07)
18. **North American Noxious Weed Free.** Forage and straw inspected for, and determined to be free of, weeds designated as noxious by the director as defined in Section 22-2402(15) Idaho Code and noxious weeds listed on the North American Designated Weed List. ~~(3-19-07)~~()
19. **North American Weed Free Forage Certification Program.** The North American Weed Invasive Species Management Association standard for forage certification. ~~(3-19-07)~~()
20. **North American Twine.** Special Purple and yellow colored twine approved by NAISMA that is used to mark bales as certified to the North American Standards. ~~(3-19-07)~~()
21. **North American Standards.** Requirements of the North American Weed Free Forage Certification Program. (3-19-07)
22. **Noxious Weed Free.** No noxious weeds with viable seed, injurious portions, or propagating parts were found during inspection procedures. (3-19-07)
23. **Pellets.** Forage that is harvested from a field certified to North American Standards and is manufactured into an agglomerated feed, formed by compacting and forcing through die openings by a mechanical process. (3-19-07)
24. **Straw.** The dried stalks or stems remaining after grain is harvested. (3-19-07)
25. **Transit Certificate.** A document completed by an approved inspector to certify products proposed for movement as certified noxious weed free into states that require noxious weed free forage and straw certification. The transit certificate must be in the possession of the transporter. ~~If individual bales are tagged with an approved bale tag, a transit certificate is not required.~~ ~~(4-4-13)~~()

011. ABBREVIATIONS.

01. **ISDA.** The Idaho State Department of Agriculture. (3-19-07)
02. **NA~~W~~ISMA.** North American Weed Invasive Species Management Association. ~~(3-19-07)~~()
03. **NWFF&S.** Noxious Weed Free Forage and Straw. (3-19-07)

012. -- 099. (RESERVED)

100. VOLUNTARY NOXIOUS WEED FREE FORAGE AND STRAW CERTIFICATION PROGRAM.

01. **Purpose.** The noxious weed free forage and straw certification program is a voluntary program, the purpose of which is to provide a means for the inspection, certification, and marking of forage and straw as noxious weed free. The program will be managed by the department and may be implemented through an agent of the department. The program will allow for the preparation of a transit certificate for the purpose of interstate transport or shipping of forage and straw into and through states which place regulations and restrictions on such commodities. The program is intended to reduce the exportation, importation, growth, and spread of noxious weeds. (4-4-13)

02. Certifying Authority. The department or its agent is the certifying authority. The certifying authority shall appoint, as needed, approved inspectors throughout the state, who may issue certificates of inspection. (3-10-00)

03. Certification Training. The department shall determine minimum training and accreditation standards for approved inspectors. Training will be provided annually by the department or its agent. Attendance at annual training will certify accreditation for the inspector for that calendar year. Approved inspectors will be issued a certificate of training for the calendar year. Annual training shall include: (3-19-07)

- a. Field inspection techniques and procedures; (3-19-07)
- b. ISDA and North American Noxious weed list plant identification; (3-19-07)
- c. ISDA and North American certification standards and guidelines; (3-19-07)
- d. Knowledge of weed management, including: (3-19-07)
 - i. Burning; (3-19-07)
 - ii. Mowing, cutting or roguing; (3-19-07)
 - iii. Mechanical methods; and (3-19-07)
 - iv. Herbicides. (3-19-07)
- e. Inspection forms. (3-19-07)

04. Certification Program. (3-10-00)

- a. The department or its agent shall: (3-10-00)
 - i. Coordinate forage and straw inspections within the state; (3-10-00)
 - ii. Select, train, and supervise persons who serve as approved inspectors; (3-10-00)
 - iii. Issue certificates of inspection, transit certificates, North American Twine, forage cubes/pellets tags/labels, certified compressed forage bale binding material, and bale tags to qualifying participants; (3-19-07)
 - iv. Maintain a record of inspections performed and certificates and tags issued; (7-1-94)
- b. Under the direction of the department or its agent an approved inspector may perform inspections and issue certificates of inspection, transit certificates, North American Twine, forage cubes/pellets tags/labels, and bale tags within the state at cost. (3-19-07)

05. Application for Certification. (7-1-94)

- a. Application for certification inspection shall be made on forms available from the department or its agent and submitted to the department or its agent. (5-8-09)
- b. An applicant's signature on the application for certification is verification of the accuracy of the information submitted, and signifies the applicant's intent to comply with the post-certification and distribution requirements. (3-10-00)

06. Field Inspection Procedures. (7-1-94)

- a. Forage or straw shall be inspected within a maximum of ten (10) days prior to cutting/harvesting in the field of origin for each field and cutting to be certified. Fields must be inspected again if circumstances prevent

harvest of the forage for a period greater than ten (10) days from the first inspection. ~~(3-19-07)~~(____)

b. Each field inspected shall be identified by the name of the owner and a field name or number. The certification inspection may be performed on an entire field or a portion of a field, if the portion is plainly marked and identified prior to inspection. (3-10-00)

c. Field inspections must take place prior to any operation that will limit the approved inspector's ability to properly inspect and certify the field. Fields that have been cut or harvested prior to inspection are ineligible for certification. (3-19-07)

d. There shall be a minimum of two (2) entry points per field. (3-19-07)

e. There shall be minimum of one (1) entry point per each ten (10) acres (four (4) hectares). ~~(3-19-07)~~(____)

f. Each point of entry shall be at least one-hundred fifty (150) feet (forty-five (45) meters) into the field, and each additional one-hundred fifty (150) feet (forty-five (45) meters) traveled shall constitute an entry point. Travel shall be uninterrupted, proceeding through the field being inspected. ~~(3-19-07)~~(____)

g. The entire field border shall be physically inspected. (3-19-07)

h. The field inspection will include all ditches, fence rows, roads, easements, rights-of-way, or buffer zones surrounding the field. (3-19-07)

i. Forage which contains any noxious weeds as identified in Section 22-2402(15) or noxious weeds listed on the North American Noxious Weed List, may be certified if the following requirements are met: (3-19-07)

i. ~~Field upon which the forage was produced was treated to prevent seed formation or seed ripening to the degree that there is no danger of dissemination of the seed, or any injurious portion thereof from such noxious weeds, or undesirable plant species, or the propagating parts of the plant are not capable of producing a new plant; Forage that contains any noxious weeds may still be certified if the field upon which the forage was produced is treated to prevent noxious weed seed or other propagule viability according to agricultural practices acceptable to, and to the satisfaction of, the approved inspector.~~ Forage that contains any noxious weeds may still be certified if the field upon which the forage was produced is treated to prevent noxious weed seed or other propagule viability according to agricultural practices acceptable to, and to the satisfaction of, the approved inspector. ~~(3-19-07)~~(____)

ii. Noxious weed(s) were treated not later than rosette to bud stage, or boot stage for grass species classified as noxious weeds, prior to cutting or harvesting; and (3-19-07)

iii. Treatment method can include, but is not limited to burning, mowing, cutting or roguing, mechanical methods, or chemicals. (3-19-07)

j. An inspection certificate shall document that the above requirements have been met. (3-19-07)

k. Baling equipment must be cleaned of any noxious weeds prior to harvesting certified forage. If the baling equipment is not cleaned, the first three (3) small square bales or the first large round or square bale produced shall be considered non-certified. (3-19-07)

l. Interstate shipment of baled forage and straw shall be accompanied by an original transit certificate issued by the approved inspector in the county of origin. ~~If individual bales are tagged with an approved bale tag, a transit certificate is not required.~~ The storage area shall also be inspected and shall be free of noxious weeds. ~~(4-4-13)~~(____)

m. An approved inspector may not inspect fields of which said inspector has ownership or financial interest. (3-19-07)

07. Certification Standards. After completing an inspection, the approved inspector shall complete a certificate of inspection. (3-10-00)

a. If the field or commodity inspected is certified as North American Noxious Weed Free, the approved inspector shall issue a certificate of inspection for that harvest or cutting. If the field or commodity contains North American Noxious Weeds, but does not contain Idaho State noxious weeds, it may be certified as Idaho State noxious weed free, and such certification shall be noted on the certificate of inspection. (3-19-07)

b. If the field or commodity inspected is certified as noxious weed free, as defined in these rules, the approved inspector may also issue, upon request, any of the following documents: (3-19-07)

i. Transit certificates. (7-1-94)

ii. Bale tags. The date on the bale tag must accurately reflect the year in which the bale was produced. (4-4-13)

iii. North American Twine only if the field or commodity is certified as North American Noxious Weed Free. (3-19-07)

iv. Forage cube/pellet tag/labels only if the field or commodity is certified as North American Noxious Weed Free. (3-19-07)

v. Certified compressed forage bale binding material only if the field or commodity is certified as North American Noxious Weed Free. (3-19-07)

c. Certificates of inspection, transit certificates and bale tags shall be on forms prescribed by the department or its agent. (3-10-00)

d. North American Twine and bale tags must be purchased from the department or its agent. (5-8-09)

08. Copy of Inspections and a List of Approved Inspectors. Upon request, the agent shall provide the department with a copy of certificates of inspections issued and a current list of approved inspectors. (3-10-00)

09. Reciprocity. Forage or straw certified under a reciprocal agreement between the department and another state, and certified as North American Noxious Weed Free according to the other state's approved certification standards, may be shipped into the state of Idaho and shall be considered to meet the requirements of the Idaho program. (3-19-07)

10. Exports. Certification under these rules does not qualify a commodity for export from the United States. Applications for certification for export should be made directly to the Division of Plant Industries within the department. (3-10-00)

11. Voluntary Posting. After certification, a producer may post signs, or other forms of notification, on the certified commodity indicating that the commodity is certified as noxious weed free. (3-10-00)

12. Post-Certification and Distribution Requirements. After a producer's commodity has been inspected and certified, the producer shall: (3-19-07)

a. Take reasonable and prudent steps to protect the certified commodity from contamination; (7-1-94)

b. Keep the certified commodity separated from all uncertified commodity; (3-10-00)

c. Attach bale tags, certified compressed forage bale binding material, or North American Twine to each bale of certified forage or straw intended for sale as noxious weed free forage or straw prior to the bales leaving the producers stack yard or storage area; and (3-19-07)

d. Attach cube/pellet tag/label to each container of certified forage cubes/pellets intended for sale as noxious weed free forage prior to the containers leaving the producer's facility. (3-19-07)

e. Provide the shipper, trucker, or transporter with the appropriate number of transit certificates. #

~~individual bales are tagged with an appropriate bale tag, a transit certificate is not required.~~ (4-4-13)()

13. Cancellation for Failure to Comply. Any person who provides false information on an application for inspection or who fails to comply with the post-certification and distribution requirements may, upon order of the director, be suspended for a period of up to two (2) years from participating in the forage and straw certification program. (7-1-94)

14. Enforcement and Cancellation. Harvested lots of forage or straw from certified fields may be checked at any time by an approved inspector. Manufactured lots of forage cubes, pellets, and compressed forage bales may be checked at any time by an approved inspector. Evidence that forage, straw, forage cubes/pellets, or compressed forage bales are not from a certified field or that any lot has not been protected from contamination shall be cause for cancellation of certification. (3-19-07)

15. Misuse of Transit Certificate and Certification Markings. Using a transit certificate or certification marking for forage from a field that has not been certified shall constitute a violation of these rules. (3-19-07)

16. Certification Fees. A minimum of thirty dollars (\$30) per inspection shall be charged for up to ten (10) acres, and three dollars (\$3) per acre thereafter, for fields up to ninety-nine (99) acres. Fields that are one-hundred (100) acres or larger in size, the fee is three dollars (\$3) per acre for the first one-hundred (100) acres and two dollars (\$2) per acre thereafter. The agent is authorized to assess a general fee of thirty dollars (\$30) per year to recover overhead costs. ~~The agent may waive the general fee if the applicant has already been assessed a similar fee for other types of crop inspections.~~ (3-19-07)()

101. -- 149. (RESERVED)

150. NORTH AMERICAN NOXIOUS WEED LIST.

Common Name	Scientific Name
Absinth wormwood	<i>Artemisia absinthium</i>
Bermudagrass Austrian fieldcress	<i>Cynodon dactylon</i> <i>Rorippa austriaca</i>
Black henbane	<i>Hyoscyamus niger</i>
Buffalobur	<i>Solanum rostratum</i>
Canada thistle	<i>Cirsium arvense</i>
Common burdock	<i>Arctium minus</i>
Common crupina	<i>Crupina vulgaris</i>
Common mullein	<i>Verbascum thapsus</i>
Common tansy	<i>Tanacetum vulgare</i>
Common teasel	<i>Dipsacus fullonum</i>
Cutleaf teasel	<i>Dipsacus laciniatus</i>
Dame's rocket	<i>Hesperis matronalis</i>
Dalmatian toadflax	<i>Linaria dalmatica</i>
Diffuse knapweed	<i>Centaurea diffusa</i>
Dyers woad	<i>Isatis tinctoria</i>
Field bindweed	<i>Convolvulus arvensis</i>
Hemp (marijuana)	<i>Cannabis sativa</i>

Common Name	Scientific Name
Henbane, Black	Hyoscyamus niger
Field scabious	Knautia arvensis
Hoary alyssum	Berteroa incana
Hoary cress	Cardaria spp.
Horsenettle	Solanum carolinense
Houndstongue	Cynoglossum officinale
Johnsongrass	Sorghum halepense
Jointed goatgrass	Aegilops cylindrica
Leafy spurge	Euphorbia esula
Matgrass	Nardus stricta
Meadow knapweed	Centaurea pratensis
Medusahead	Taeniatherum caput-medusae
Milium	Milium vernale
Musk thistle	Carduus nutans
Orange hawkweed	Hieracium aurantiacum
Oxeye daisy	Chrysanthemum leucanthemum
Perennial pepperweed	Lepidium latifolium
Perennial sorghum	Sorghum almum
Perennial sowthistle	Sonchus arvensis
Plumeless thistle	Carduus acanthoides
Poison hemlock	Conium maculatum
Puncturevine	Tribulus terrestris
Purple loosestrife	Lythrum salicaria
Quackgrass	Agropyron repens
Rush skeleton weed	Chondrilla juncea
Russian knapweed	Centaurea repens
Scentless chamomile	Matricaria perforata or M. milaceum
Scotch broom	Cytisus scoparius
Scotch thistle	Onopordum acanthium
Sericea Lespedeza	Lespedeza cuneata
Silverleaf nightshade	Solanum elaeagnifolium
Skeletonleaf bursage	Ambrosia tomentosa
Spotted knapweed	Centaurea maculosa
Squarrose knapweed	Centaurea virgata

Common Name	Scientific Name
St. Johnswort	<i>Hypericum perforatum</i>
Sulfur cinquefoil	<i>Potentilla recta</i>
Syrian beancaper	Zygophyllum fabago
Tall buttercup	<i>Ranunculus acris</i>
Tansy ragwort	<i>Senecio jacobaea</i>
Toothed spurge	Euphorbia dentata
Vipers bugloss/blueweed	Echium vulgare
Wild oats	<i>Avena fatua</i>
Wild proso millet	<i>Panicum miliaceum</i>
Yellow hawkweed	<i>Hieracium pratense</i>
Yellow starthistle	<i>Centaurea solstitialis</i>
Yellow toadflax	<i>Linaria vulgaris</i>

(4-4-13)()

(BREAK IN CONTINUITY OF SECTIONS)

250. CERTIFICATION MARKING.

Each certified bale or container shall be marked by one (1) of the following: (3-19-07)

01. North American Twine. Only one (1) strand is required per bale. (3-19-07)

02. Forage Bale Tag. The following information shall be shown on baled forage and straw: (5-8-09)()

a. The words - “North American Weed Free Forage Certification Program” or “Idaho State Noxious Weed Free Forage & Straw Certification Program”; (3-19-07)

b. Bale tag serial number; (3-19-07)

c. County of origin identification; (3-19-07)

d. ISDA emblem; (3-19-07)

e. ISDA telephone number; and (3-19-07)

f. A statement that the product is “Certified to the North American Standards” or “Certified to the Idaho State Noxious Weed Free Standards.” (3-19-07)

g. Year the bale tag was issued. (4-4-13)

03. Forage Cube/Pellet Tag/Label. Certification tags/labels shall be attached to or a statement with the following information shall be printed on each container of noxious weed free product: (3-19-07)

a. The words - “North American Weed Free Forage Certification Program”; (3-19-07)

- b.** ISDA forage manufacturer identification number; (3-19-07)
- c.** ISDA emblem; (3-19-07)
- d.** ISDA telephone number; and (3-19-07)
- e.** A statement that the product is “Certified to the North American Standards.” (3-19-07)

04. Certified Compressed Forage Bale Binding Material. The following information shall be printed in purple ink on yellow binding material. Two (2) consecutive vertical purple lines approximately one-eighth of an inch (1/8”) wide, spaced approximately one and one-quarter inches (1 1/4”) apart, placed before and after written text which includes the acronym “ISDA NWFFS” and can include the manufacturer’s name. (5-8-09)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.41 - RULES PERTAINING TO THE IDAHO SOIL AND PLANT AMENDMENT ACT OF 2001

DOCKET NO. 02-0641-1601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2017 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-2204, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

To incorporate by reference information and updates contained in the 2017 Official Publication of the Association of American Plant Food Control Officials (AAPFCO) as they pertain to the methodology and practice of conducting regulatory soil and plant amendment registration and label review.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, pages 46-47](#).

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not regulated by the federal government. The federal government does not regulate soil and plant amendments. The rule is, however, consistent with the national standards of the Association of American Plant Food Control Officials.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

ISDA does not anticipate any fiscal impact from the changes to be made to the rule as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jared Stuart, Agriculture Section Manager at (208) 332-8620.

DATED this 4th Day of August, 2016.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd.
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8500
Fax: (208) 334-2170

IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

05.01.03 - RULES OF THE CUSTODY REVIEW BOARD

DOCKET NO. 05-0103-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 20-520(1)(r), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The minor changes made to this rule are in an effort to update code numbers and to clarify and refine the existing rules.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Custody Review Board is already familiar with the changes being made, which are minor and will only increase clarity.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Marc Crecelius, (208) 334-5100 x. 422.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 4th Day of August, 2016.

Sharon Harrigfeld, Director
Idaho Department of Juvenile Corrections
954 W. Jefferson
PO Box 83720
Boise, ID 83720-0285
Phone: (208) 334-5100
FAX: (208) 334-5120

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 05-0103-1601
(Only Those Sections With Amendments Are Shown.)

000. LEGAL AUTHORITY.

01. **Section 20-520(1)(r), Idaho Code.** Pursuant to Section 20-520(1)(r), Idaho Code, the Idaho Department of Juvenile Corrections shall adopt rules implementing the Custody Review Board and operations and procedures of such board. (3-5-08)

02. **Section 20-532, Idaho Code.** Pursuant to Section 20-532, Idaho Code, a juvenile offender committed to a secure facility shall remain until the offender reaches nineteen (19) years of age, is retained for extended custody pursuant to Section 20-520(1)(r), Idaho Code, or is released or discharged. (3-5-08)

03. **Section 20-504(1+2), Idaho Code.** Pursuant to Section 20-504(1+2), Idaho Code, the department shall have authority to adopt such administrative rules pursuant to the procedures provided in Title 67, Chapter 52, Idaho Code, as are deemed necessary or appropriate for the function of the department and the implementation and administration of the Juvenile Corrections Act. (5-3-03)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. **Board.** The Custody Review Board of the Idaho Department of Juvenile Corrections. (5-3-03)

02. **Case Management Team.** A team consisting of juvenile services coordinator (JSC), case manager, and juvenile probation officer (JPO) who provide input in setting and following through with treatment goals. (5-3-03)

03. **Case Manager.** Department staff assigned to directly manage a juvenile's case, such as a group leader at a state institution; or, if a juvenile is placed at a contract program, the contract provider's employee assigned to directly manage a juvenile's case. (5-3-03)

04. **Classification.** A process for determining the needs and requirements of juveniles for whom commitment has been ordered, and for assigning them to housing units or programs according to their needs and existing resources. (5-3-03)

05. **Commit.** Commit means to transfer legal custody. (5-3-03)

06. **Court.** Means any Idaho district court or magistrate's division thereof. (5-3-03)

07. **Director.** The director of the Idaho Department of Juvenile Corrections. (5-3-03)

08. **Department.** The Idaho Department of Juvenile Corrections. (5-3-03)

09. **Extended Time in Custody.** Any period of time a juvenile remains in custody after age nineteen (19) and not to exceed age twenty-one (21). (5-3-03)

10. **Incident Report.** A written document reporting an unusual occurrence or special event ~~such as the discovery of contraband, use of physical force, use of chemical agents, discharge of firearms,~~ and action taken ~~including notation of strip and cavity searches.~~ (5-3-03)()

11. Juvenile. A person less than eighteen (18) years of age or who was less than eighteen (18) years of age at the time of any act, omission or status bringing the person within the purview of the Juvenile Corrections Act. (5-3-03)

12. Juvenile Records. Information concerning the individual's delinquent or criminal, personal, and medical history and behavior and activities while in custody, including but not limited to commitment papers, court orders, personal property receipts, visitors' lists, type of custody, disciplinary infractions and actions taken, grievance reports, work assignments, program participation, and miscellaneous correspondence. (5-3-03)

13. Juvenile Services Coordinator (JSC). An employee of the department who is assigned to a particular juvenile as the case worker, licensed in social work. (3-5-08)

14. Legal Guardian. A person appointed as guardian of a minor under the laws of Idaho. For the purposes of this chapter, legal guardian does not include and shall not be construed to include the owner, operator or the agent of an owner, or operator of a detention center, observation and assessment center, secure facility, residential facility, or other facility having temporary or long-term physical custody of the juvenile offender. (5-3-03)

011. -- 099. (RESERVED)

100. GENERAL PROVISIONS.

01. Hearings. All matters and testimony concerning juveniles, before the Custody Review Board, are confidential and shall be conducted in accordance with Section 67-2341(1), (4), and (5), Idaho Code; Title 974, Chapters 3 1 and 2, Idaho Code; and Title 20, Chapter 5, Idaho Code, regarding juvenile records and proceedings. (5-3-03)()

02. Written Record. A written record of the vote by the Custody Review Board shall be kept confidential and privileged from disclosure, to the extent allowed by law, and provided that the record, or portions thereof, shall be made available upon request, for all lawful purposes or as required by the Idaho Public Records Act, Title 974, Chapter 3 1, Idaho Code. (5-3-03)()

03. Confidentiality. Distribution of the record by the Custody Review Board or an employee of the Idaho Department of Juvenile Corrections to any person not specifically allowed by law to receive or read it may result in disciplinary action. (5-3-03)

04. Records of Hearings and Meetings. Summary minutes of individual hearings and case reviews will be approved and signed by the board members and maintained in the department office. (5-3-03)

101. POWERS AND DUTIES.

01. Review. The Custody Review Board is empowered by Sections 20-520(1)(r) and 20-532, Idaho Code, to review the cases of juveniles in the custody of the department whose cases have been referred to the board according to Section 201 of these rules. (3-5-08)

02. Board Determinations. After conducting its review, the Custody Review Board shall advise the department's director whether it has determined that the juvenile before it needs an extended time in custody to address accountability, community protection, and competency. (3-5-08)

03. ~~Indeterminate Sentence Remains~~ Placement. The Custody Review Board cannot direct the placement or treatment of a juvenile in the department's custody, ~~and any determination by the board that extended time in custody is needed by a juvenile shall not create a determinate sentence of any kind.~~ (3-5-08)()

04. Release Date for Juveniles. If a juvenile has appeared before the Custody Review Board and the board has concluded that he not be retained in custody, the director shall set a release date for the juvenile, as follows: (4-6-05)

a. If a juvenile appears before the board prior to his nineteenth birthday, but before a reasonable and

appropriate release plan has been finalized, the department may retain the juvenile long enough to finalize those plans, but not to exceed forty-five (45) days after the juvenile's nineteenth birthday. (4-6-05)

b. In all other cases, the department may retain the juvenile long enough to finalize a reasonable and appropriate release plan, but not to exceed forty-five (45) days after the director's signed order has been transmitted or delivered to the facility/JSC or any other department appointee. (3-5-08)

(BREAK IN CONTINUITY OF SECTIONS)

201. REFERRAL OF CASES TO THE BOARD.

The Custody Review Board shall review cases referred to it and will advise the director whether it has determined that extended time in custody is necessary for a juvenile to address competency, accountability and community protection. (3-5-08)

01. Cases Eligible for Referral. A juvenile's case is eligible for referral to the board in either of the following circumstances: (4-6-05)

a. If the juvenile is no more than six (6) months from his nineteenth birthday and one (1) or more members of the juvenile's case management team believes that the juvenile needs extended time in custody beyond that juvenile's nineteenth birthday; or (4-6-05)

b. If the juvenile, at the time of commitment to the Department, is past age nineteen (19), ~~has already been retained in the department's custody based on an earlier determination of the Custody Review Board, and one (1) or more members of a juvenile's case management team, the Custody Review Board, or the director of the department believes that an additional case review is in the best interest of the juvenile or others affected~~ or will reach age nineteen (19) prior to the next scheduled meeting of the Custody Review Board. ~~(3-5-08)~~ ()

02. Juvenile Has Not Appeared Before the Custody Review Board. Any juvenile who has not appeared before the Custody Review Board in person or by video conference prior to the date of his nineteenth birthday, excepting those juveniles described in Paragraph 201.01.b. above, shall be released from custody on that date or as soon thereafter as a reasonable release plan can be determined and finalized. The final release date shall not exceed forty-five (45) days after the juvenile's nineteenth birthday. ~~(4-6-05)~~ ()

03. Hearing Schedules. Once a case is referred, the board shall set a date for the review hearing. ~~Unless the board decides otherwise, no case will be heard more often than every six (6) months.~~ ~~(5-3-03)~~ ()

04. Written Submissions. All written documents and letters to be considered at a particular hearing must be submitted fourteen (14) calendar days in advance of the scheduled hearing in order to ensure that they will be considered. Other documents may be allowed after this deadline by unanimous consent of the board members present. Documents may include: (5-3-03)

- a. Progress reports to the courts pursuant to Sections 20-532 and 20-540, Idaho Code; (5-3-03)
- b. Report on original offenses leading to commitment plus order for commitment and orders of judgment; (5-3-03)
- c. Written recommendations from each member of the treatment team; (5-3-03)
- d. Polygraph results and written conclusions and recommendations from the professionals administering these tests; (5-3-03)
- e. Psychosocial or psychosexual evaluations; (5-3-03)
- f. Victim's written statement; (5-3-03)

- g. Juvenile's written statement; (5-3-03)
- h. Initial classification; (5-3-03)
- i. Custody level assessment at case review; and (5-3-03)
- j. Any other pertinent information. (5-3-03)

202. PERSONS TO ATTEND OR COMMENT.

01. Juvenile. The juvenile who is the subject of a custody review proceeding is required to appear either in person or by videoconference. (5-3-03)

02. Witnesses. The Custody Review Board allows for the participation of victims, attorneys, members of the case management team, and approved family members or others who have a direct relationship to the specific hearing or subject of the hearing. (5-3-03)

03. Participation. Persons who want to participate in hearings shall notify the Custody Review Board staff fourteen (14) calendar days in advance of the scheduled hearing. Children, including victims, under the age of fourteen (14), may not be allowed to attend the hearings without prior approval of the director or board. Parents or guardians of child victims in a case may appear and comment. (5-3-03)

04. Time Limited. At its discretion, ~~The board's presiding officer~~ may limit the time allotted to each participant during the proceeding. ()

05. Exclusion. ~~in~~ At its discretion, and, the board may exclude witnesses or participants for inappropriate or disruptive behavior, or other good cause. ~~(5-3-03)~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

400. VICTIMS.

It is the policy of the Idaho Department of Juvenile Corrections and the Custody Review Board to respect the rights of victims of crime in Idaho, pursuant to the Idaho Constitution and statute. When a juvenile's case has been referred for review, the department shall be responsible for providing the board with a list of crime victims who were officially identified by the adjudicating court or prosecuting attorney. (5-3-03)

01. Notice to Victims. The board will notify identified victims of a juvenile's crime that a custody review hearing has been scheduled. These victims will also be notified of their right to submit written statements or information and their right to provide testimony. After the review proceeding, victims shall be notified of the board's determination regarding the custody of the juvenile. (5-3-03)

a. Notices of rights, hearings, the board's final determinations, and any anticipated release documents will be sent to the victim of record at the last known address. It is the responsibility of the victim to provide any change of address. (3-5-08)

b. Victims may request that they not be notified or contacted. (5-3-03)

02. Victim Testimony. A victim may attend any and all custody review hearings pertinent to their case and to provide testimony. The victim may be allowed to testify before the board members during a hearing session ~~but at a time separate from the actual hearing with~~ outside the juvenile's presence. ~~All testimony of a victim shall remain confidential.~~ (5-3-03) ()

IDAPA 06 - BOARD OF CORRECTION
06.01.02 - RULES OF CORRECTIONAL INDUSTRIES
DOCKET NO. 06-0102-1601
NOTICE OF PROCLAMATION OF RULEMAKING

EFFECTIVE DATE: The effective date of this rule is October 7, 2016.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. Section 20-413A, Idaho Code, requires the Idaho State Board of Correction to make rules. Pursuant to Section 20-212(1), Idaho Code, rules of the Idaho State Board of Correction are subject to review of the Idaho State Legislature pursuant to Sections 67-454, 67-5291, and 67-5292, Idaho Code, but no other provisions of chapter 52, title 67, Idaho Code, shall apply to the Board, except as otherwise specifically provided by statute. In accordance with Section 20-212(1) of the Idaho Code, this rule shall become final and effective thirty (30) days after the date of publication in the Idaho Administrative Bulletin.

PUBLIC HEARING SCHEDULE: Pursuant to Section 20-212(1), Idaho Code, public hearings concerning this rulemaking will not be scheduled.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking will amend IDAPA 06.01.02, Rules of Correctional Industries, by revising a section heading to provide more clarity and by replacing language related to obligations to act.

FEE SUMMARY: There is no increase in fees imposed with this rulemaking.

FISCAL IMPACT: There is no fiscal impact on general funds for this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because Section 20-212(1) exempts the Idaho State Board of Correction from conducting negotiated rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Andrea Sprengel, Financial Manager, at (208) 577-5561.

DATED this 20th Day of July 2016.

Andrea Sprengel
Financial Manager
Idaho Correctional Industries
1301 N. Orchard St. Suite 110
Boise, ID 83706
Ph: (208) 577-5561
Fax: (208) 577-5560

THE FOLLOWING IS THE PROCLAMATION OF RULEMAKING TEXT
OF DOCKET NO. 06-0102-1601
(Only Those Sections With Amendments Are Shown.)

013. ~~INMATE COMPENSATION~~ **DISBURSEMENT OF FUNDS.**

01. Correctional Industries Betterment Account. The moneys received from the private agricultural employer for inmate labor will be deposited into the Correctional Industries Betterment Account pursuant to Section 20-416, Idaho Code. The funds deposited will be dispersed between Correctional Industries and the IDOC to cover costs of the agricultural inmate labor program and contribute to the Idaho Victim's Compensation Fund. (11-6-15)

a. The funds dispersed to Correctional Industries will also be used in accordance with Section 20-416, Idaho Code. (7-4-14)

b. The funds dispersed to IDOC ~~may~~ **must** also be used to offset the costs of incarceration, supplement education opportunities to inmates, and provide resources for reentry to the community. ~~(11-6-15)~~ **(10-7-16)**

02. Inmate Trust Account. Inmates will be compensated for their work in accordance with Section 20-412, Idaho Code. Inmate earnings must be deposited into the inmate's trust account. Upon deposit, deductions for court-ordered financial obligations, including child support and restitution, will be made by IDOC. Any other deductions by IDOC will be made according to IDOC policy. (11-6-15)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.02.05 - RULES GOVERNING PLUMBING SAFETY LICENSING

DOCKET NO. 07-0205-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-2605, 54-2606 and 54-2610, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The construction industry in Idaho is facing a critical shortage of skilled workers, including plumbers. As it currently stands, many plumbers come to Idaho from states that do not require schooling which leaves them unable to qualify for testing as a journeyman. This rulemaking change would allow for such a person to qualify for a journeyman's exam by demonstrating they have eight (8) years of plumbing experience, in lieu of the current requirement of four (4) years' experience and four (4) years of schooling.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the contents of this rulemaking related to the experience and education requirements for out-of-state plumbers who seek licensure as journeymen in Idaho has been discussed at numerous Plumbing Board meetings over the past several years. Initially, a rule was established and approved by the Legislature in 2015 setting forth the licensure requirements; however, after further discussion with plumbing contractors, the Board determined to further revise the requirements for out-of-state applicants. This rule provides a benefit to Idaho plumbing contractors who may need to hire journeymen who have plumbing experience acquired in another state, but who have not been required to perform schooling in that state. For those journeymen who have sufficient plumbing experience in the form of a minimum of eight (8) years' experience working as a plumbing journeyman in the trade, this rule would allow them to be eligible to take the plumbing journeyman exam in Idaho.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys at (208) 332-8986.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 4th Day of August, 2016.

Steve Keys, Deputy Administrator – Operations
Division of Building Safety
Phone: (208) 332-8986
Fax: (877) 810-2840

1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0205-1601
(Only Those Sections With Amendments Are Shown.)

012. JOURNEYMAN.

01. Qualifications for Journeyman Plumber. An applicant for a journeyman plumber's certificate of competency shall have at least four (4) years' experience as an apprentice making plumbing installations under the constant on-the-job supervision of a qualified journeyman plumber, as provided by Section 54-2611, Idaho Code. Pipe fitting will not be accepted as qualifications for a journeyman plumber's certificate of competency. In order to obtain a journeyman certificate of competency, an individual shall submit an application for examination and license. The application shall be accompanied by proof the applicant has completed an approved course of instruction for four (4) years as provided in Subsection 011.02 of these rules. The journeyman examination may be taken by an individual who has successfully completed an Idaho Plumbing Board-approved course of instruction for four (4) years as described in Subsection 011.03 of these rules. The examination fee shall be as prescribed by Section 54-2614, Idaho Code, and shall accompany the application. (4-11-15)

02. Examination. The journeyman examination grade is based on answers to written questions and practical work performed on plumbing installations as determined by the Division after successful completion of the written examination. Time allowed for the written examination is four (4) hours. A passing grade is required on the written examination. The practical portion of the exam may be performed on a job in-progress or in a laboratory setting and shall consist of work performed in either a residential or commercial application. The practical portion of the exam must pass with no violations. (4-11-15)

03. Out of State Journeyman Applications. (4-11-15)

a. Exhibition of a license issued by another recognized jurisdiction may be accepted as proof of meeting the experience and schooling requirements listed in Subsections 012.01 and 012.02 of these rules. An application for a journeyman certificate of competency from an individual previously licensed as a journeyman in another jurisdiction recognized by the Idaho Plumbing Board shall include satisfactory proof of licensure in such jurisdiction. The applicant shall pay all applicable application and examination fees to the Division, and successfully complete the journeyman examination administered by the Division. (4-11-15)

b. An application for a journeyman certificate of competency from an individual who has never been previously licensed as a journeyman in a jurisdiction recognized by the Idaho Plumbing Board shall include evidence that demonstrates that the applicant has four (4) years of plumbing work experience of a nature at least equivalent to that which a plumbing apprentice must perform in Idaho, as well as four (4) years of schooling equivalent to that which a plumbing apprentice must complete in Idaho. Alternatively, such an applicant may submit proof verifying eight (8) years, defined as a minimum of sixteen thousand (16,000) hours of plumbing work experience of a nature at least equivalent to that which a plumbing apprentice must perform in Idaho. Upon submission of sufficient proof of having completed such experience and schooling requirements, such applicant shall also pay all applicable application and examination fees to the Division, and successfully complete the journeyman examination administered by the Division. (4-11-15)()

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.02.07 - RULES GOVERNING CIVIL PENALTIES

DOCKET NO. 07-0207-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-2605, 54-2606 and 54-2607, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Currently, plumbing contractors are exempt from being subject to a civil penalty for failing to pay for or obtain a plumbing permit prior to making a plumbing installation, as well as exempt from being subject to a civil penalty for failing to make corrections of plumbing installations when notified by the Division. As a result, short of licensure discipline, there is no recourse available to the Division if a contractor chooses not to comply with the permitting and inspection requirements in statute or rule. This rulemaking puts contractors on equal footing with plumbing specialty contractors and homeowners who are already subject to civil penalties for the same violations.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rulemaking is simple in nature. This rulemaking was discussed at several Plumbing Board meetings over the course of the last year, and no opposition to it was made. The rulemaking includes plumbing contractors among those who may receive a civil penalty for certain violations of the plumbing statutes and rules.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys at (208) 332-8986.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 29th Day of July, 2016.

Steve Keys, Deputy Administrator – Operations
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542
Phone: (208) 332-8986
Fax: (877) 810-2840

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0207-1601
(Only Those Sections With Amendments Are Shown.)**

011. CIVIL PENALTIES.

The following acts shall subject the violator to penalties based on the following schedule. (3-24-05)

01. Plumbing Contractor. Except as provided by Section 54-2602, Idaho Code, any person who acts, or purports to act as a plumbing contractor, as defined by Section 54-2611(a), Idaho Code, without a valid Idaho state certificate of competency authorizing him to do so shall be subject to a civil penalty of not more than five hundred dollars (\$500) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-24-05)

02. Certification or Registration. Except as provided by Section 54-2602, Idaho Code, any person performing plumbing as defined in Section 54-2603, Idaho Code, without an appropriate certificate of competency or registration shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-24-05)

03. Failure to Disclose. Any applicant for a plumbing registration or certificate of competency who upon request fails to disclose any required information including, but not limited to, their complete licensure history or the fact that they have been previously licensed as a journeyman or master plumber in any recognized jurisdiction shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-29-12)

04. Performance Outside Scope of Certificate. Any specialty contractor or specialty journeyman performing plumbing installations, alterations or maintenance outside the scope of the specialty certificate of competency shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-24-05)

05. Fees, Permits and Inspections. Any person, ~~other than a person who holds a valid Idaho state plumbing contractor's certificate of competency,~~ failing to obtain a required permit, pay applicable fees, ~~or~~ properly post a plumbing permit, or to request an inspection of all pipes, fittings, valves, vents, fixtures, appliances, appurtenances, and water treatment installations and repairs shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand (\$1,000) for each offense thereafter. ~~(4-2-08)~~()

06. Corrections. Any person, ~~other than a person who holds a valid Idaho state plumbing contractor's certificate of competency,~~ who fails to make corrections in the time allotted in the notice on any plumbing installation as set forth in Section 54-2625, Idaho Code, shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. ~~(4-2-08)~~()

07. Gross Violation. In the case of continued, repeated or gross violation of Title 54, Chapter 26, Idaho Code, or IDAPA 07.02.07, disciplinary action shall be initiated against certificate holders under this chapter or the matter shall be referred for prosecution. (3-24-05)

08. Judicial Review. Any party aggrieved by the final action of the Idaho Plumbing Board shall be entitled to a judicial review thereof in accordance with the provisions of Title 67, Chapter 52, Idaho Code. (3-24-05)

IDAPA 09 - IDAHO DEPARTMENT OF LABOR

09.01.30 - UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

DOCKET NO. 09-0130-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 72-1333, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The current rule is being amended to remove references to outdated processes for handling claims and references to local offices. The change also would remove a section no longer required of a claimant coded as attached to their employer.

This rule change removes reference to paper card reporting, reporting through a local office and local office scheduling. Claims are now handled at the claim center or over the Internet. The change also removes the requirement for claimants attached to their employer to do more than maintain contact with their employer.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016, Idaho Administrative Bulletin, [Vol. 16-7, Page 55](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Joshua McKenna (208) 332-3570, ext. 3919.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 29th Day of July, 2016.

Joshua McKenna, Bureau Chief
Department of Labor
317 W. Main Street, Boise, ID 83735
(208) 332-3570 ext. 3919
joshua.mckenna@labor.idaho.gov

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 09-0130-1601
(Only Those Sections With Amendments Are Shown.)**

010. DEFINITIONS.

Unless the context clearly requires otherwise, these terms shall have the following meanings when used in these Rules, in interpretations, in forms, and in other official documents issued by the Director of the Department of Labor. (3-19-99)

01. Additional Claim. An initial claim made after a period of employment subsequent to a new claim in the same benefit year. (3-19-99)

02. Administrative Office. The main office in Boise, Idaho, wherein the administrative functions of the Department of Labor are performed. (3-19-99)

03. Appealed Claim. An interested party's appeal to the Appeals Bureau of a claims examiner's decision on a claim or a request for review by the Industrial Commission of a decision made by an appeals examiner. (3-19-99)

04. Average Annual Wage. For the purpose of determining the taxable wage base, under Section 72-1350(1), Idaho Code, the average annual wage shall be computed by dividing that calendar year's total wages in covered employment, excluding State government and cost reimbursement employers, by the average number of workers in covered employment for that calendar year as derived from data reported to the Department of Labor by covered employers. (3-19-99)

05. Average Weekly Wage. For the purpose of establishing the maximum weekly benefit amount, under Section 72-1367(2)(a), Idaho Code, the average weekly wage shall be computed by dividing the total wages paid in covered employment (including State government and cost reimbursement employers) for the preceding calendar year, as computed from data reported to the Department of Labor by covered employers, by the monthly average number of workers in covered employment for the preceding calendar year and then dividing the resulting figure by fifty-two (52). (4-11-06)

06. Benefit Balance. The unpaid portion of the total benefits payable with respect to a claimant's unemployment during a given benefit year. (3-19-99)

07. Boise Claims Office. The central claims office located in Boise, Idaho, where unemployment claims throughout the state are processed. ()

~~078.~~ **Chargeability Determination.** A determination issued by the Director or his authorized agent with respect to whether a covered employer's account shall be charged for benefits paid on a claim. (3-19-99)

~~089.~~ **Claim.** An application for unemployment insurance or "benefits." (3-19-99)

~~0910.~~ **Combined Wage Claim.** A claim filed under any interstate agreement whereby an unemployed worker with covered wages in more than one (1) state may combine such wages. (3-19-99)

~~101.~~ **Compensable Claim.** An application for benefits which certifies to the completion of a benefit period (one (1) or more weeks). (3-19-99)

~~172.~~ **Contested Claim.** A claim in which an interested party disputes the claimant's right to benefits. (3-19-99)

~~123.~~ **Continued Claim.** An application for waiting-week credit or for benefits for specific compensable weeks. (3-19-99)

~~134.~~ **Corporate Officer.** Any individual empowered in good faith by stockholders or directors in accordance with the corporation's articles of incorporation or bylaws to discharge the duties of a corporate officer. (4-4-13)

~~145.~~ **Employment.** For the purpose of the personal eligibility conditions of Section 72-1366(5), Idaho

Code, "employment" means that employment subsequent to which a claimant has not earned fourteen (14) times his weekly benefit amount. (4-11-06)

~~156~~. **Full-Time Employment.** A week of full-time employment for a claimant is one in which he has worked what are customarily considered full-time hours for the industry in which he has been employed that week or in which the earnings are more than one and one-half (1-1/2) times his weekly benefit amount. (4-5-00)

~~167~~. **Initial Claim.** The first claim for benefits made by an unemployed individual during a continuous period of unemployment. An initial claim may be either new or additional. (3-19-99)

~~178~~. **Interstate Claim.** A claim filed by a worker who resides in a state other than the state (or states) in which he has earned wages in covered employment. (3-19-99)

~~189~~. **Intrastate Claim.** A claim filed by a worker who has earned wages within that state or who has federal wages assigned to that state. (3-19-99)

~~1920~~. **Itinerant Point.** A place where claims-taking services are regularly provided for less than four (4) days a week by a local office which carries on its primary operations at another point. (3-19-99)

~~201~~. **Liability Determination.** A determination issued by the Director or his authorized agent with respect to whether a cost reimbursement employer shall be charged for benefits paid on a claim. (3-19-99)

~~212~~. **Local Office.** A community office of the Department of Labor at which claims are taken and job placement services are provided to applicants and employers. (3-19-99)

~~223~~. **Monetary Determination.** A determination of eligibility which lists a claimant's base period employer(s) and wages and establishes, if the claimant is eligible, his benefit year, his weekly benefit amount, and his total benefit amount. (3-19-99)

~~234~~. **New Claim.** The first initial claim made in a benefit year. (3-19-99)

~~245~~. **Non-Monetary Determination.** A determination issued by a claims examiner with respect to the personal eligibility conditions of a claimant. (3-19-99)

~~256~~. **Personal Identification Number (PIN).** A confidential number or other electronic method of verification unique to a claimant or an employer that is required for such persons to perform certain transactions with the Department by electronic or telephonic means. A PIN has the same force and effect as a manual signature. (4-6-05)

~~267~~. **Regular Claim.** A claim based on wages earned during a base period, excluding extended benefit claims. (3-19-99)

~~278~~. **Signature, Signed.** The Personal Identification Number (PIN) is considered the same as a manual signature and has the same force and effect when a claimant or an employer uses Department-approved electronic or telephonic means to submit information to or engage in transactions with the Department. (4-6-05)

~~289~~. **Telephone Claim.** A claim filed by telephone rather than in person at a local office. (3-19-99)

~~2930~~. **Total Benefit Amount.** The full amount of benefits to which a claimant may be entitled during a benefit year on his regular claim. (3-19-99)

~~301~~. **Unemployment.** An individual shall be deemed "unemployed" in any week during which he performs no services and with respect to which no wages are allocable, or in any week in which the total wages payable to him for less than full-time work performed in such week amounted to less than one and one-half (1-1/2) times his weekly benefit amount. (3-19-99)

~~312~~. **Weekly Benefit Amount.** The full amount of benefits to which a claimant may be entitled for one

(1) week of total unemployment. (3-19-99)

011. -- 099. (RESERVED)

100. ABLE TO WORK.

“Able to work” is defined as the physical and mental ability to perform work under conditions ordinarily existing during a normal workweek. It does not mean that a person must be able to perform work in his customary occupation or the same kind of work he last performed. Ref. Sec. 72-1366(4), Idaho Code. (3-19-99)

01. Able to Perform Some Type of Work. A person must be able to perform work of some type for which he can qualify at the time he files an initial claim for unemployment insurance. If he becomes ill or disabled after he has filed an initial claim, the claim may be continued under the illness provision if no suitable work is available. If suitable work is offered or becomes available which would have provided wages greater than one-half (1/2) his weekly benefit amount and cannot be accepted because of the claimant’s illness or disability, the claimant shall be ineligible for benefits. If the same illness or disability continues for more than one (1) week and the accumulation of missed wages exceeds one-half (1/2) his weekly benefit amount, the claimant shall be ineligible for benefits effective the week in which the accumulated missed wages exceed one-half (1/2) the weekly benefit amount. (3-30-07)

02. Able to Work Part-Time. A person who is able to work only part of the workday or part of the workweek is not considered “able to work” for the purposes of Section 72-1366(4), Idaho Code. This rule does not apply to claimants who establish eligibility under the Americans with Disabilities Act. (3-19-99)

03. Disability Compensation. A claimant’s receipt of disability compensation shall not in itself establish that he is unable to work or unavailable for work, even though the payee has been declared totally disabled. (3-19-99)

04. Illness Provision. A person who claims benefits under the illness provision must remain available for local office job referral; however, he may leave the area for treatment of his illness and continue to be eligible under the illness provision. ~~The claimant may continue reporting through the local office near his residence.~~ If suitable work becomes available and is refused or missed because of the claimant’s illness, or the claimant is unable to respond to a referral because of the illness, the claimant shall be ineligible if the work would have provided wages greater than one-half (1/2) his weekly benefit amount. If the same illness or disability continues for more than one (1) week and the accumulation of missed wages exceeds one-half (1/2) his weekly benefit amount, the claimant shall be ineligible for benefits effective the week in which the accumulated missed wages exceed one-half (1/2) the weekly benefit amount. ~~(3-30-07)~~ ()

05. Illness Provision as Applied to Transitional or Reopened Claim. Receipt of benefits during the same illness continues throughout a spell of unemployment, even though the current benefit year has ended and a transitional claim is filed the following year or the claim is reopened after a period of not filing with no intervening employment. (3-19-99)

06. Mental Illness. A person who, after filing a valid claim, becomes unable to work because of mental illness is entitled to the same benefits under the illness provision as claimants who suffer from other types of illness or disability. (3-19-99)

07. Withdrawing from Labor Market Because of Illness. A claimant who withdraws from the labor market because of illness or injury prior to filing a claim is not eligible until he is able to work and available for work. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

425. NEW CLAIMS/ADDITIONAL CLAIMS.

Ref. Sec. 72-1308, Idaho Code.

(3-19-99)

01. Claims for Benefits, Delayed Filing. ~~When any claims taking office has reason to believe there will be more claimants than can be served on any given day, an appointment slip must be used to adjust the claims load for the filing of initial claims. Appointment slips shall be issued to potential claimants who cannot be served on the date they first make contact with the office. A claimant who receives an appointment slip does not forfeit any benefit rights provided, however, that he subsequently files his claim on the day assigned.~~ When ~~any claims taking the Boise Claims eOffice~~ has determined that a claimant's attempt to file an initial claim was delayed due to problems with the Department's telephone or electronic filing system, the claim may be backdated if the claimant reported the access problem to ~~a local~~ **the Boise Claims eOffice** within seven (7) days of the date the problem occurred. When a claim is backdated, the continued claim report for the period of time involved will be considered timely if filed during the same week or the next week after the claim is filed. (3-30-01)()

02. Effective Date of Backdated Claims. When the filing of an initial claim for benefits is backdated due to ~~local office scheduling problems or~~ a Department system malfunction, the effective date shall be the Sunday of the week in which the claimant first reported to the ~~local~~ **Boise Claims eOffice** to file the claim or attempted to access the telephone or electronic claim filing system and there were problems with the system. (3-30-01)()

03. Filing of New Claims. New intrastate and interstate claims may be filed electronically ~~at a local office or at an itinerant location. New claims may also be filed or~~ by telephone at the Department's discretion. (4-11-15)()

a. Electronically Filed Claims. Claimants may file claims electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the application process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. A claim filed electronically will automatically be assigned to the local office that services the zip code for the mailing address provided by the claimant. (3-30-01)

b. Interstate Claims. Any claim filed by an interstate claimant shall be accepted in the same manner and under the same conditions for which claims are accepted from intrastate claimants. Interstate claimants may also file claims by calling the Department's interstate claims unit. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the interstate claims unit to initiate the claim. (3-30-01)

c. Itinerant Locations. Claims may be filed at itinerant points established by the Department for the taking of claims. A claim filed at an itinerant point on the first regular itinerant visit after the claimant's separation will be effective as of the Sunday preceding the first business day of the period of unemployment. If the claimant has filed the claim on a date later than the first regular itinerant visit, the claim shall be effective as of the Sunday preceding the date the claim is actually filed. (3-30-01)

04. Itinerant Claims. Itinerant points for the taking of unemployment insurance claims may be established, changed, or discontinued at administrative discretion. Where itinerant service is being inaugurated, changed, or discontinued for a particular community, public notice of such inauguration, change, or discontinuance shall be conspicuously posted and public notification placed in a daily or weekly newspaper of general distribution for the affected community two (2) weeks prior to such inauguration, change or discontinuance. Ref. Sec. 72-1368(1), Idaho Code. (3-19-99)

05. Registration for Work. All claimants who cannot demonstrate a firm attachment to an employer, industry, or union will be required to register for employment. Unless otherwise requested by the claimant, such registration should apply only to the days or parts of the days that the claimant is in fact unemployed and available for employment. The work history of each claimant shall be recorded, and a work application completed and filed. Ref. Sec. 72-1366(2), Idaho Code. (3-19-99)

06. Registration/Reporting Requirements -- Interstate Claimants. Interstate claimants shall be required to register for work in the State in which they reside and to comply with the same reporting requirements prescribed for regular Idaho intrastate claimants. Ref. Sec. 72-1366(1), (2), Idaho Code. (4-11-06)

07. Requirement to Provide Information. If a claimant fails to provide the Department with all necessary information pertinent to eligibility, the claimant may be denied benefits until the information is provided. Any individual making a claim for benefits shall provide the Department with: (3-15-02)

- a. The claimant's legal name; (3-15-02)
- b. The claimant's Social Security Number; (3-15-02)
- c. The address where the claimant's mail is delivered; (3-15-02)
- d. The claimant's place of last employment; (3-15-02)
- e. The name, correct mailing address, and the reason for separation from all of the claimant's most recent and base-period employers; (3-15-02)
- f. If requested by the Department, a list of all other employment in the past twenty-four (24) months; (3-15-02)
- g. The claimant's plans for finding other employment at the earliest possible time; and (3-15-02)
- h. Other information necessary for the proper processing of the claim. (3-15-02)
- i. Once a claim has been established, the claimant must provide, upon request, a record of the claimant's work search, in order for the Department to assess the claimant's compliance with personal eligibility requirements. (3-15-02)

j. If the claimant's identifying information does not match with data provided by the Social Security Administration, the Division of Motor Vehicles, or other public entities for identity verification purposes, the claimant will be provided notice and an opportunity to provide proof of identity before benefits may be denied for failure to provide proof of identity. A claimant notified by telephone of the need to provide proof of identity must provide the information to the Department within two (2) business days. A claimant notified by mail of the need to provide proof of identity must provide the information to the Department within five (5) business days of the date of mailing of the notice. (4-11-06)

08. Right to Claim Benefits. In no instance, under any circumstances or conditions, shall an individual be denied the right to file a claim and to receive in writing a decision regarding his eligibility. Ref. Sec. 72-1366(1), Idaho Code. (3-19-99)

09. Separation Information. Unless separation information has been provided by other means, such as a mass layoff list, a notice of the filing of a claim and a request for separation information must be completed and mailed to the claimant's last employer and each next preceding employer until the wages received by the claimant equal or exceed fourteen (14) times his weekly benefit amount. For all such employers, the claimant must provide the Department with the employer's name and correct mailing address, the claimant's dates of employment, the type of employment performed, and the claimant's gross earnings from each employment. Ref. Sec. 72-1366 (1), (5) and (14), Idaho Code. (4-11-06)

10. Separation Notice. (3-19-99)

a. Notice to Employer of Separation. At the time a claim for benefits is filed, the Department will review the claimant's employment subsequent to which the claimant has not earned fourteen (14) times his weekly benefit amount. The Department will mail a separation notification letter to each employer within that period. A Department representative will then contact the employer within seven (7) business days for a response, unless the claimant indicated he quit the job for reasons not attributable to the employer. Every employer (including employers not subject to Title 72, Chapter 13, Idaho Code), when contacted by a Department representative for a response, shall respond to the Department with the reasons for the separation whenever the claimant: (3-30-07)

- i. Left his employment voluntarily; (3-19-99)
- ii. Was discharged from his employment due to misconduct; (3-19-99)
- iii. Is unemployed due to a strike, lockout, or other labor dispute; (3-30-07)
- iv. Is not working due to a suspension; or (3-30-07)
- v. Was separated for any other reason except lack of available work. (3-19-99)

b. Employer Response. The employer's response shall be given by the employer or on the employer's behalf by someone having personal knowledge of the facts concerning the separation. The employer should provide to the Department, via electronic media or mail, copies of any documentation supporting their position. (3-30-07)

11. Filing of an Additional Claim or Reopening a Claim. A claim series may be reestablished electronically ~~at a local office or at an itinerant location~~ or by telephone at the Department's discretion. The additional or reopened claim (AC/RO) must be filed during a week in which the claimant becomes unemployed and/or wants to reestablish the claim. ~~(4-11-15)~~(____)

a. Electronic Filing. A claimant may file an AC/RO electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the AC/RO process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. (3-30-01)

b. Telephone Filing. A claimant may file an AC/RO by telephone by calling ~~a local~~ **the Boise Claims Office**. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the local office to initiate the claim. ~~(3-30-01)~~(____)

c. Reestablished Claim. A claim must be reestablished after a claimant has failed to report or has reported excessive earnings for two (2) or more consecutive weeks. ~~Claims shall be reestablished as follows: If the break in the claim series is two (2) weeks or longer, the claim must be reestablished by filing a reopen or additional claim.~~ ~~(3-19-99)~~(____)

~~i. If the break in the claim series is two (2) weeks or longer, the claim must be reestablished by filing a reopen or additional claim; or (3-19-99)~~

~~ii. If the claimant is reporting excessive earnings for no more than two (2) consecutive weeks, the claim may be automatically reestablished if the claimant notifies the local office at the time of or prior to filing the report for the second week that he has become unemployed. Otherwise, the claim must be reestablished by filing a reopen/additional claim. (3-19-99)~~

(BREAK IN CONTINUITY OF SECTIONS)

575. SEEKING WORK.

Ref. Sec. 72-1366(4), (6), Idaho Code. (3-19-99)

01. Attitude and Behavior. A claimant's attitude and behavior must be conducive to a positive reaction by employers to his job search. (3-19-99)

02. Effort to Secure Employment. A claimant will be expected to do what is normally done by unemployed persons that are seeking work. (3-19-99)

03. Employer's Hiring Practices. An employer's reluctance to hire a claimant because of his

appearance or physical condition is not a determining factor in ruling on the claimant's eligibility. (3-19-99)

04. Job Attachment Classifications. For the purpose of administering the work search requirements of Section 72-1366(4) and (6), Idaho Code, a claimant will be classified according to his attachment to an employer or industry, as follows: (3-19-99)

a. Code R-Recall, U-Union or X-Both. A claimant who has a firm attachment to an employer, industry or union, or who is temporarily or seasonally unemployed, and expects to return to his former job or employer in a reasonable length of time not to exceed a maximum of sixteen (16) weeks. If during the sixteen (16) weeks the claimant returns to work temporarily for the job attached employer, the claimant's period of job attachment shall be extended by one (1) week for each week of verified full-time employment as defined by Section 72-1312, Idaho Code. (3-25-16)

b. Code B. A claimant who possesses marketable skills in an occupation, but has no immediate prospects for reemployment, and whose employment expectations (i.e., wages, hours, etc.) are realistic in relation to the normal labor market supply and demand in his area of availability. (3-19-99)

c. Code C. A claimant who has no marketable skills or whose skills have become obsolete and who is unable to return to his former occupation, or who has a special need for employment-related services. (3-19-99)

d. Code D. A claimant who is assigned to a training course under the provisions of Section 72-1366(8), Idaho Code. (3-19-99)

05. Jobs Availability. A claimant will not be required to make useless employer contacts if there are no jobs available in the area due to seasonal factors. (3-19-99)

06. No Employment Prospects. A claimant shall apply for and accept a lower or beginning pay rate for employment if he has no prospects for a better paying job in the locality. (3-19-99)

07. Registering and Reporting on Work-Seeking Activity. A claimant must register for work and report as required to be eligible for benefits. Ref. Sec. 72-1366(1), (2), Idaho Code. (4-11-06)

08. Seasonal Availability. A claimant who is regularly employed on a seasonal basis shall be available for other types of work in the off-season to be eligible for benefits. (3-19-99)

09. Work-Seeking Requirement Categories. A claimant shall seek work in accordance with the following categories of work-seeking activity, as instructed by a Department representative or as notified by the Department via electronic claims messaging. A claimant must meet the requirements of the code to which the claimant is assigned. A claimant's category of work-seeking activity will be determined and modified based on the claimant's prevailing local labor market conditions and/or the average county unemployment rates. A claimant that has not registered for work when filing his claim and that is required to secure employment must register with the local office within two (2) weeks of filing an initial claim for benefits. Failure to comply with work-seeking requirements may result in a denial of benefits. (4-11-06)

a. Code O claimant must: ~~maintain regular contact with their employer(s) or union.~~ (3-15-02)()

~~i. Maintain regular contact with their employer(s) or union. Code O claimant may also be required to engage in one (1) or more of the following activities to increase his prospects of returning to work or securing employment: (3-15-02)~~

~~ii. Make local inquiries; (3-19-99)~~

~~iii. Maintain contact with the local office; (4-11-06)~~

~~iv. Check "help-wanted" ads in newspapers or trade publications; (3-15-02)~~

~~v. Attend a Job Search Workshop; or (3-15-02)~~

~~vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (4-11-06)~~

b. Code 1 claimant will be required to engage in one (1) or more of the following activities to increase their prospects of securing employment: (3-15-02)

i. Make at least one (1) employer contact each week in the manner prescribed by the ~~local Boise Claims Office;~~ ~~(4-11-06)~~ Boise ()

ii. Attend a Job Search Workshop; (3-15-02)

iii. Expand work search efforts to surrounding areas or states; (3-15-02)

iv. Send resumes to firms/businesses that hire people with their skills; (3-15-02)

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-15-02)

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (4-11-06)

c. Code 2 claimant will be required to engage in one (1) or more of the following activities to increase his prospects of securing employment: (3-15-02)

i. Make at least two (2) employer contacts per week in the manner prescribed by the ~~local Boise Claims Office;~~ ~~(4-11-06)~~ Boise ()

ii. Attend a Job Search Workshop; (3-15-02)

iii. Expand work search efforts to surrounding areas or states; (3-15-02)

iv. Send resumes to firms/businesses that hire people with their skills; (3-15-02)

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-15-02)

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (4-11-06)

d. Code 3 claimant will be required to engage in one (1) or more of the following activities to increase his prospects of securing employment: (3-15-02)

i. Make at least three (3) employer contacts per week in the manner prescribed by the ~~local Boise Claims Office;~~ ~~(4-11-06)~~ Boise ()

ii. Attend a Job Search Workshop; (3-15-02)

iii. Expand work search efforts to surrounding areas or states; (3-15-02)

iv. Send resumes to firms/businesses that hire people with their skills; (3-15-02)

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-15-02)

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Department representative. (4-11-06)

IDAPA 09 - IDAHO DEPARTMENT OF LABOR
09.01.35 - UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES
DOCKET NO. 09-0135-1601
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 72-1333, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

To clarify that payments by a partnership to its partner or by a sole proprietorship to its owner are excluded as wages for purposes of unemployment insurance tax.

The rule adds an additional exclusion to wages. It would exclude as wages payments by a partnership to its partner or payment by a sole proprietorship by its owner. This is currently how payments by a partnership to its partners or payments by a sole proprietorship to its owner should be handled. Providing this in a rule would help clarify this for partners, partnerships and owners of a sole proprietorship business.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, page 56](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Larry Ingram (208) 332-3570, ext. 3543.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 29th Day of July, 2016.

Larry Ingram
Bureau Chief
Department of Labor
317 West Main Street
Boise, ID 83735
(208) 332-3570 ext. 3543
larry.ingram@labor.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 09-0135-1601
(Only Those Sections With Amendments Are Shown.)

061. DEFINITIONS.

The definitions listed in IDAPA 09.01.35, "Unemployment Insurance Tax Administration Rules," Section 011, and the following are applicable to the UI Compliance Bureau. (3-22-07)

01. Tolerance Amount. A tolerance of four dollars and ninety-nine cents (\$4.99) is established in connection with collection of amounts due; and under normal circumstances, no delinquency or credit will be issued or carried on the books of accounts for this amount or less. Ref. Section 72-1349, Idaho Code. (3-19-99)

02. Wages. The term "wages" includes all remuneration from whatever source, paid or given in exchange for services performed or to be performed, including the cash value of remuneration in any medium other than cash. "Wages" in covered employment, and subject to unemployment insurance reporting, include, but are not limited to: (3-19-99)

a. Commissions, bonuses, draws, distributions, dividends and any other forms or types of payments made by corporations or other similar entities if paid in exchange for services; (4-5-00)

b. Bonuses, prizes, and gifts given to an employee in recognition of services, sales, or production; (3-19-99)

c. Commissions for past services in covered employment; (3-19-99)

d. Remuneration paid to corporate officers which is paid in exchange for services performed or to be performed for or on behalf of the corporation; (4-5-00)

e. Salary advances against commissions; (3-19-99)

f. All forms of profit sharing for services rendered unless specifically exempt under Section 72-1328, Idaho Code; (3-19-99)

g. Excess travel or employer business allowances over actual expense, or over the federal allowance per diem rate for the area of travel, unless returned to the employer; (3-19-99)

h. Vacation or "idle-time" pay, no matter when paid; (3-19-99)

i. Personal expense reimbursement, not gifts, i.e., clothing, family expenses, rent. (3-19-99)

j. The director or his authorized representative shall determine the fair market value of any other remuneration, regardless of its classification, form, or label, which is paid to a worker in exchange for services. In making such determination, consideration will be given to the prevailing wage for similar services. Ref. Section 72-1328, Idaho Code. (3-19-99)

k. Noncash payments for farm work, if such payments would be classified as wages for federal tax purposes. Ref. Section 72-1328, Idaho Code. (3-15-02)

03. Exclusions From Wages. The term "wages" described in Section 72-1328, Idaho Code, does not include the following: (3-19-99)

a. Prizes or gifts for special occasions which are expressions of good will; (3-19-99)

b. Bonuses paid for signing a contract; (3-19-99)

- c. Fees paid to participate periodically in meetings of boards of directors unless exceedingly high; i.e., amounts comparable to other employers in the same industry, of relatively the same size; (3-19-99)
- d. Drawings or advances by partners of a partnership, or by members of a limited liability company treated for federal tax purposes as a partnership or sole proprietorship; (4-5-00)
- e. Rental charge for personal equipment provided by the employee on the job: if (3-19-99)
 - i. There is a rental agreement; and (3-19-99)
 - ii. The worker has received a reasonable wage for services performed; and (3-19-99)
 - iii. The fees are held separately on the employer's records. (3-19-99)
- f. Stock or membership interests issued for purposes other than services performed or to be performed; (3-19-99)
- g. Reimbursement for actual employee expense, or business allowance arrangements with employees that requires them: (3-19-99)
 - i. To have paid or incurred reasonable job related expenses while performing services as employees; and (3-19-99)
 - ii. To account adequately to the employer for these expenses; and (3-19-99)
 - iii. To return any excess reimbursement or allowance. (3-19-99)
- h. Payments for employee travel expenses, provided: (3-19-99)
 - i. Payments are job related expenses while performing services; and (3-19-99)
 - ii. Payments do not exceed actual expenses or the federal allowance per diem rate for the area of travel; and (3-19-99)
 - iii. Records for days of travel pertaining to per diem payments are verifiable. (3-19-99)
- i. Employee fringe benefits as set forth in Section 132 of the Internal Revenue Code, which are excluded from an employee's gross income and which are not subject to federal unemployment taxes. (3-19-99)
- j. Noncash payment to farmworkers. Noncash payments for farm work will be excluded from wages if they are "de minimis" in relation to the amount of cash wages paid to the farmworkers, or are not intended to be treated as the cash equivalent of wages, or as the cash payment of wages. Ref. Section 72-1328, Idaho Code. (3-15-02)

k. Payments of any kind by a partnership to its partner or by a sole proprietorship to its owner. ()

04. Treatment of Limited Liability Companies. For purposes of state unemployment tax coverage, a limited liability company will have the same status as it may have elected for federal tax purposes, or as that status may be determined or required by the federal government, subject to the provisions of Subsections 061.02 and 061.03. Any member of a limited liability company that has elected to be treated as a corporation for federal tax purposes shall be treated as a corporate officer for state Employment Security Law purposes. (4-4-13)

05. Domestic Employment. Domestic employment is defined as work performed in the operation or maintenance of a private home, local college club, or local chapter of a college fraternity or sorority, as distinguished from services as an employee in pursuit of an employer's trade, occupation, profession, enterprise, or vocation. In general, domestic employment "in the operation or maintenance of a private home, local college club, or local chapter

- of a college fraternity or sorority” includes, but is not limited to, services rendered by: (3-15-02)
- a. Cooks; (3-15-02)
 - b. Waiters; (3-15-02)
 - c. Butlers; (3-15-02)
 - d. Maids; (3-15-02)
 - e. Janitors; (3-15-02)
 - f. Laundresses; (3-15-02)
 - g. Furnacemen; (3-15-02)
 - h. Handymen; (3-15-02)
 - i. Gardeners; (3-15-02)
 - j. Housekeepers; (3-15-02)
 - k. Housemothers; and (3-15-02)
 - l. In-home caregivers. Ref. Section 72-1315, Idaho Code. (3-15-02)

06. Casual Labor. Services performed by an individual not in the course of the employer's trade or business who earns less than fifty dollars (\$50) per calendar quarter per service provided and is not regularly employed by that employer to perform such service, are exempt from unemployment insurance coverage. Ref. Section 72-1316A(19), Idaho Code. Domestic employment exempt as casual labor may not be exempt if the employer is covered for such service under Section 72-1315(8), Idaho Code. The term, “services not in the course of the employer's trade or business,” refers to services that do not promote or advance the trade or business of the employer. The casual labor exemption found under Section 72-1316A(19), Idaho Code, does not apply to services performed for corporations because all services performed for a corporation are considered to be in the course of the trade or business of the corporation. (4-11-06)

07. Willfully. When applied to the intent with which an act is done or omitted, willfully implies simply a purpose or willingness to commit the act or make the omission referred to. It does not require any intent to violate law, in the sense of having an evil or corrupt motive or intent. It is more nearly synonymous with “intentionally,” “designedly,” “without lawful excuse,” and therefore not accidental. Ref. Section 72-1372 and 72-1351A, Idaho Code. (3-22-07)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.02 - EMERGENCY MEDICAL SERVICES (EMS) -- RULE DEFINITIONS
DOCKET NO. 16-0102-1601
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-1011 through 56-1023, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Wednesday, September 28, 2016 - 10:30 am MDT	
Department of Health & Welfare Bureau of EMS Preparedness Boise, ID	
Teleconference Call-In:	Webinar:
Dial in: 1 (562) 247-8422 Participant Code: 314-674-246	Participate through computer & Internet audio https://attendee.gotowebinar.com/register/3403979524131150850 PRE-REGISTRATION is required

No physical hearing sites will be available. Participants will need to call in by phone or pre-register for the webinar and receive confirmation by e-mail for joining this public hearing.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This chapter of rules defines EMS terminology that applies to all EMS chapters of rules. These rules are being updated to amend definitions to align with current practices for:

1. Recognition of Emergency Personnel Licensure Interstate Compact Act (REPLICA), adopted by the 2016 Legislature;
2. IDAPA 16.01.06, "Emergency Medical Services (EMS) -- Data Collection and Submission Requirements," a new chapter published in this same Bulletin under Docket No. 16-0106-1601; and
3. IDAPA 16.01.03, "Emergency Medical Services (EMS) -- Agency Licensing Requirements," amendments published in this same Bulletin under Docket 16-0103-1602.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

The Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds, or to the state general fund. This rulemaking is intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016,

Idaho Administrative Bulletin, **Vol. 16-6, pages 32 and 33**, under Docket No. 16-0103-1601, EMS-Agency Licensing Requirement rules.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact John Cramer at (208) 334-4000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 5th Day of August, 2016.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5500 phone / (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0102-1601
(Only Those Sections With Amendments Are Shown.)**

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 16.01.02, "Emergency Medical Services (EMS) -- Rule Definitions." (7-1-14)

02. Scope. These rules contain the definitions used throughout the Emergency Medical Services chapters of rules adopted by the Department. Those chapters include: (7-1-14)

a. IDAPA 16.01.01, "Emergency Medical Services (EMS) -- Advisory Committee (EMSAC)"; (7-1-14)

b. IDAPA 16.01.03, "Emergency Medical Services (EMS) -- Agency Licensing Requirements"; (7-1-14)

c. IDAPA 16.01.05, "Emergency Medical Services (EMS) -- Education, Instructor, and Examination Requirements"; (7-1-16)

d. IDAPA 16.01.06, "Emergency Medical Services (EMS) -- Data Collection and Submission Requirements"; ()

e. IDAPA 16.01.07, "Emergency Medical Services (EMS) -- Personnel Licensing Requirements"; and (7-1-16)

f. IDAPA 16.01.12, "Emergency Medical Services (EMS) -- Complaints, Investigations and Disciplinary Actions." (7-1-16)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS AND ABBREVIATIONS A THROUGH B.

For the purposes of the Emergency Medical Services (EMS) chapters of rules, the following definitions apply:

(7-1-14)

- 01. Advanced Emergency Medical Technician (AEMT).** An AEMT is a person who: (7-1-14)
- a.** Has met the qualifications for licensure under Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.07, “Emergency Medical Services (EMS) - Personnel Licensing Requirements”; (7-1-14)
 - b.** Is licensed by the Department under Sections 56-1011 through 56-1023, Idaho Code; (7-1-14)
 - c.** Carries out the practice of emergency medical care within the scope of practice for AEMT determined by the Idaho Emergency Medical Services Physician Commission (EMSPC), under IDAPA 16.02.02, “Rules of the Idaho Emergency Medical Services (EMS) Physician Commission”; and (7-1-14)
 - d.** Practices under the supervision of a physician licensed in Idaho. (7-1-14)
- 02. Advanced Life Support (ALS).** The provision of medical care, medication administration and treatment with medical devices that correspond to the knowledge and skill objectives in the Paramedic curriculum currently approved by the State Health Officer and within the scope of practice defined in IDAPA 16.02.02, “Rules of the Idaho Emergency Medical Services (EMS) Physician Commission,” by persons licensed as Paramedics by the Department. (7-1-14)
- 03. Advanced Practice Professional Nurse.** A person who meets all the applicable requirements and is licensed to practice as an Advanced Practice Professional Nurse under Sections 54-1401 through 54-1418, Idaho Code. (7-1-14)
- 04. Advertise.** Communication of information to the public, institutions, or to any person concerned, by any oral, written, graphic means including handbills, newspapers, television, radio, telephone directories, billboards, or electronic communication methods. (7-1-14)
- 05. Affiliation.** The formal association that exists between an agency and those licensed personnel who appear on the agency’s roster, which includes active participation, collaboration, and involvement. Affiliation can be demonstrated by the credentialing of licensed personnel by the agency medical director. (7-1-14)
- 06. Affiliating EMS Agency.** The licensed EMS agency, or agencies, under which licensed personnel are authorized to provide patient care. (7-1-14)
- 07. Air Ambulance.** Any privately or publicly owned fixed wing aircraft or rotary wing aircraft used for, or intended to be used for, the transportation of persons experiencing physiological or psychological illness or injury who may need medical attention during transport. This may include dual or multipurpose vehicles which otherwise comply with Sections 56-1011 through 56-1023, Idaho Code, and specifications established in IDAPA 16.01.03, “Emergency Medical Services (EMS) - Agency Licensing Requirements.” (7-1-14)
- 08. Air Medical Agency.** An agency licensed by the Department that responds to requests for patient care and transportation from hospitals and EMS agencies using a fixed wing aircraft or rotary wing aircraft. (7-1-14)
- 09. Air Medical ~~1~~.** A service type available to a licensed air medical EMS agency that meets the requirements in IDAPA 16.01.03, “Emergency Medical Services (EMS) - Agency Licensing Requirements.” (7-1-14) ()
- ~~10~~. Air Medical Response.** The deployment of an aircraft licensed as an air ambulance to an

emergency scene intended for the purpose of patient treatment and transportation. (7-1-14)

101. Air Medical # Support. A service type available to a licensed air medical EMS agency that meets the requirements in IDAPA 16.01.03, "Emergency Medical Services (EMS) - Agency Licensing Requirements." (7-1-14)()

12. Ambulance. Any privately or publicly owned motor vehicle, or nautical vessel, used for, or intended to be used for, the transportation of sick or injured persons who may need medical attention during transport. This may include dual or multipurpose vehicles which otherwise comply with Sections 56-1011 through 56-1023, Idaho Code, and specifications established in IDAPA 16.01.03, "Emergency Medical Services (EMS) - Agency Licensing Requirements." (7-1-14)

13. Ambulance-Based Clinicians. Licensed Professional Nurses and Advanced Practice Professional Nurses who are currently licensed under Sections 54-1401 through 54-1418, Idaho Code, and Physician Assistants who are currently licensed under Sections 54-1801 through 54-1841, Idaho Code. (7-1-14)

14. Ambulance Agency. An agency licensed by the Department under Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.03, "Emergency Medical Services (EMS) - Agency Licensing Requirements," operated with the intent to provide personnel and equipment for medical treatment at an emergency scene, during transportation or during transfer of persons experiencing physiological or psychological illness or injury who may need medical attention during transport. (7-1-14)

15. Applicant. Any organization that is requesting an agency license under Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.03, "Emergency Medical Services (EMS) - Agency Licensing Requirements," including the following: (7-1-14)

- a. An organization seeking a new license; (7-1-14)
- b. An existing agency that intends to: (7-1-14)
 - i. Change the level of licensed personnel it utilizes; (7-1-14)
 - ii. Change its geographic coverage area (except by agency annexation); or (7-1-14)
 - iii. Begin or discontinue providing patient transport services. (7-1-14)

16. Assessment. The evaluation of a patient by EMS licensed personnel intending to provide treatment or transportation to that patient. (7-1-14)

17. Basic Life Support (BLS). The provision of medical care, medication administration, and treatment with medical devices which correspond to the knowledge and skill objectives in the EMR or EMT curriculum currently approved by the State Health Officer and within scope of practice defined in IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission," by persons licensed as EMRs or EMTs by the Department. (7-1-14)

18. Board. The Idaho Board of Health and Welfare. (7-1-14)

011. DEFINITIONS AND ABBREVIATIONS C THROUGH E.

For the purposes of the Emergency Medical Services (EMS) chapters of rules, the following definitions apply: (7-1-14)

01. Call Volume. The number of requests for service that an agency either anticipated or responded to during a designated period of time. (7-1-14)

02. Candidate. Any individual who is requesting an EMS personnel license under Sections 56-1011 through 56-1023, Idaho Code, IDAPA 16.01.07, "Emergency Medical Services (EMS) - Personnel Licensing Requirements." (7-1-14)

- 03. Certificate of Eligibility.** Documentation that an individual is eligible for affiliation with an EMS agency, having satisfied all requirements for an EMS Personnel Licensure except for affiliation, but is not licensed to practice. (7-1-14)
- 04. Certification.** A credential issued by a designated certification body for a specified period of time indicating that minimum standards have been met. (7-1-16)
- 05. Certified EMS Instructor.** An individual approved by the Department, who has met the requirements in IDAPA 16.01.05, "Emergency Medical Services (EMS) -- Education, Instructor, and Examination Requirements," to provide EMS education and training. (7-1-16)
- 06. CoAEMSP.** Committee on Accreditation of Educational Programs for the Emergency Medical Services Professions. (7-1-16)
- 07. Cognitive Exam.** Computer-based exam to demonstrate knowledge learned during an EMS education program. (7-1-16)
- 08. Compensated Volunteer.** An individual who performs a service without promise, expectation, or receipt of compensation other than payment of expenses, reasonable benefits or a nominal fee to perform such services. This individual cannot be a part-time or full-time employee of the same organization performing the same services as a volunteer and employee. (7-1-14)
- 09. Conflict of Interest.** A situation in which a decision by personnel acting in their official capacity is influenced by or may be a benefit to their personal interests. (7-1-16)
- 10. Consolidated Emergency Communications System.** Facilities, equipment, and dispatching services directly related to establishing, maintaining, or enhancing a 911 emergency communications service defined in Section 31-4802, Idaho Code. (7-1-16)
- 11. Core Content.** Set of educational goals, explicitly taught (and not taught), focused on making sure that all students involved learn certain material tied to a specific educational topic and defines the entire domain of out-of-hospital practice and identifies the universal body of knowledge and skills for emergency medical services providers who do not function as independent practitioners. (7-1-16)
- 12. Course.** The specific portions of an education program that delineate the beginning and the end of an individual's EMS education. A course is also referred to as a "section" on the NREMT website. (7-1-16)
- 13. Course Physician.** A physician charged with reviewing and approving both the clinical and didactic content of a course. (7-1-16)
- 14. Credentialing.** The local process by which licensed EMS personnel are authorized to provide medical care in the out-of-hospital, hospital, and medical clinic setting, including the determination of a local scope of practice. (7-1-14)
- 15. Credentialed EMS Personnel.** Individuals who are authorized to provide medical care by the EMS medical director, hospital supervising physician, or medical clinic supervising physician. (7-1-14)
- 16. Critical Care.** The treatment of a patient with continuous care, monitoring, medication, or procedures requiring knowledge or skills not contained within the Paramedic curriculum approved by the State Health Officer. Interventions provided by Paramedics are governed by the scope of practice defined in IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission." (7-1-14)
- 17. Critical Care Agency.** An ambulance or air medical EMS agency that advertises and provides all of the skills and interventions defined as critical care in IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission." (7-1-14)

18. **Department.** The Idaho Department of Health and Welfare. (7-1-14)
19. **Director.** The Director of the Idaho Department of Health and Welfare or his designee. (7-1-14)
20. **Division.** The Division of Public Health, Idaho Department of Health and Welfare. (7-1-14)
21. **Emergency.** A medical condition, the onset of which is sudden, that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the person's health in serious jeopardy, or in causing serious impairments of bodily function or serious dysfunction of any bodily organ or part. (7-1-14)
22. **Emergency Medical Care.** The care provided to a person suffering from a medical condition, the onset of which is sudden, that manifests itself by symptoms of sufficient severity, including severe pain, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the person's health in serious jeopardy, or in causing serious impairments of bodily function or serious dysfunction of any bodily organ or part. (7-1-14)
23. **Emergency Medical Responder (EMR).** An EMR is a person who: (7-1-14)
- a. Has met the qualifications for licensure in Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.07, "Emergency Medical Services - Personnel Licensing Requirements"; (7-1-14)
 - b. Is licensed by the Department under Sections 56-1011 through 56-1023, Idaho Code; (7-1-14)
 - c. Carries out the practice of emergency medical care within the scope of practice for EMR determined by the Idaho Emergency Medical Services Physician Commission (EMSPC), under IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission"; and (7-1-14)
 - d. Practices under the supervision of a physician licensed in Idaho. (7-1-14)
24. **Emergency Medical Services (EMS).** Under Section 56-1012(12), Idaho Code, emergency medical services or EMS is aid rendered by an individual or group of individuals who do the following: (4-11-15)
- a. Respond to a perceived need for medical care in order to prevent loss of life, aggravation of physiological or psychological illness, or injury; (4-11-15)
 - b. Are prepared to provide interventions that are within the scope of practice as defined by the Idaho Emergency Medical Services Physician Commission (EMSPC), under IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission"; (4-11-15)
 - c. Use an alerting mechanism to initiate a response to requests for medical care; and (4-11-15)
 - d. Offer, advertise, or attempt to respond as described in Section 56-1012(12), (a) through (c), Idaho Code. (4-11-15)
 - e. Aid rendered by a ski patroller, as described in Section 54-1804(1)(h), Idaho Code, is not EMS. (4-11-15)
25. **Emergency Medical Services Advisory Committee (EMSAC).** The statewide advisory board of the Department as described in IDAPA 16.01.01, "Emergency Medical Services (EMS) - Advisory Committee (EMSAC)." EMSAC members are appointed by the Director of the Idaho Department of Health and Welfare to provide counsel to the Department on administering the EMS Act. (7-1-14)
- ~~26.~~ **Emergency Medical Technician (EMT).** An EMT is a person who: (7-1-14)
- a. Has met the qualifications for licensure in Sections 56-1011 through 56-1023, Idaho Code, and

IDAPA 16.01.07, “Emergency Medical Services - Personnel Licensing Requirements”; (7-1-14)

b. Is licensed by the EMS Bureau under Sections 56-1011 through 56-1023, Idaho Code; (7-1-14)

c. Carries out the practice of emergency medical care within the scope of practice for EMT determined by the Idaho Emergency Medical Services Physician Commission (EMSPC), under IDAPA 16.02.02, “Rules of the Idaho Emergency Medical Services (EMS) Physician Commission”; and (7-1-14)

d. Practices under the supervision of a physician licensed in Idaho. (7-1-14)

~~3427.~~ **Emergency Scene.** Any setting outside of a hospital, with the exception of the inter-facility transfer, in which the provision of EMS may take place. (7-1-14)

~~268.~~ **EMS Agency.** Any organization licensed by the Department under Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.03, “Emergency Medical Services (EMS) - Agency Licensing Requirements,” that operates an air medical service, ambulance service, or non-transport service. (7-1-14)

~~279.~~ **EMS Bureau.** The Bureau of Emergency Medical Services (EMS) & Preparedness of the Idaho Department of Health and Welfare. (7-1-14)

~~2830.~~ **EMS Education Program.** The institution or agency holding an EMS education course. (7-1-16)

~~2931.~~ **EMS Education Program Director.** The individual responsible for an EMS educational program or programs. (7-1-16)

~~302.~~ **EMS Education Program Objectives.** The measurable outcome used by the program to determine student competencies. (7-1-16)

~~343.~~ **EMS Medical Director.** A physician who supervises the medical activities of licensed personnel affiliated with an EMS agency. (7-1-14)

~~324.~~ **EMS Physician Commission (EMSPC).** The Idaho Emergency Medical Services Physician Commission created under Section 56-1013A, Idaho Code, also referred to as “the Commission.” (7-1-14)

~~35.~~ **EMS Response.** A response to a request for assistance that would involve the medical evaluation or treatment of a patient, or both. ()

012. DEFINITIONS AND ABBREVIATIONS F THROUGH N.

For the purposes of the Emergency Medical Services (EMS) chapters of rules, the following definitions apply: (7-1-14)

01. Formative Evaluation. Assessment, including diagnostic testing, is a range of formal and informal assessment procedures employed by teachers during the learning process. (7-1-16)

02. Full-Time Paid Personnel. Personnel who perform a service with the promise, expectation, or receipt of compensation for performing such services. Full-time personnel differ from part-time personnel in that full-time personnel work a more regular schedule and typically work more than thirty-five (35) hours per week. (7-1-14)

03. Glasgow Coma Score (GCS). A scale used to determine a patient's level of consciousness. It is a rating from three (3) to fifteen (15) of the patient's ability to open his eyes, respond verbally, and move normally. The GCS is used primarily during the examination of patients with trauma or stroke. (7-1-14)

04. Ground Transport Time. The total elapsed time calculated from departure of the ambulance from the scene to arrival of the ambulance at the patient destination. (7-1-14)

05. Hospital. A facility in Idaho licensed under Sections 39-1301 through 39-1314, Idaho Code, and defined in Section 39-1301(a)(1), Idaho Code. (7-1-14)

06. Instructor. Person who assists a student in the learning process and meets the requirements to obtain instructor certification. (7-1-16)

07. Instructor Certification. A credential issued to an individual by the Department for a specified period of time indicating that minimum standards for providing EMS instruction under IDAPA 16.01.05, "Emergency Medical Services (EMS) -- Education, Instructor, and Examination Requirements," have been met. (7-1-16)

08. Intermediate Life Support (ILS). The provision of medical care, medication administration, and treatment with medical devices which correspond to the knowledge and skill objectives in the AEMT curriculum currently approved by the State Health Officer and within the scope of practice defined in IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission," by persons licensed as AEMTs by the Department. (7-1-14)

09. Investigation. Research of the facts concerning a complaint or issue of non-compliance which may include performing or obtaining interviews, inspections, document review, detailed subject history, phone calls, witness statements, other evidence, and collaboration with other jurisdictions of authority. (7-1-14)

10. License. A document issued by the Department to an agency or individual authorizing specified activities and conditions as described under Sections 56-1011 through 56-1023, Idaho Code. (7-1-14)

11. Licensed Personnel. Those individuals who are licensed by the Department as Emergency Medical Responders (EMR), Emergency Medical Technicians (EMT), Advanced Emergency Medical Technicians (AEMT), and Paramedics. (7-1-14)

12. Licensed Professional Nurse. A person who meets all the applicable requirements and is licensed to practice as a Licensed Professional Nurse under Sections 54-1401 through 54-1418, Idaho Code. (7-1-14)

13. Local Incident Management System. The local system of interagency communications, command, and control established to manage emergencies or demonstrate compliance with the National Incident Management System. (7-1-14)

14. Medical Supervision Plan. The written document describing the provisions for medical supervision of licensed EMS personnel. (7-1-14)

15. National Emergency Medical Services Information System (NEMSIS). NEMSIS is the national repository used to store national EMS data. NEMSIS sets the uniform data conventions and structure for the Data Dictionary. NEMSIS collects and provides aggregate data available for analysis and research through its technical assistance center accessed at <http://www.nemsis.org>. ()

156. National Registry of Emergency Medical Technicians (NREMT). An independent, non-governmental, not for profit organization which prepares validated examinations for the state's use in evaluating candidates for licensure. (7-1-14)

167. Non-transport Agency. An agency licensed by the Department, operated with the intent to provide personnel or equipment for medical stabilization at an emergency scene, but not intended to be the service that will actually transport sick or injured persons. (7-1-14)

178. Non-transport Vehicle. Any vehicle operated by an agency with the intent to provide personnel or equipment for medical stabilization at an emergency scene, but not intended as the vehicle that will actually transport sick or injured persons. (7-1-14)

189. Nurse Practitioner. An Advanced Practice Professional Nurse, licensed in the category of Nurse Practitioner, as defined in IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (7-1-14)

013. DEFINITIONS AND ABBREVIATIONS O THROUGH Z.

For the purposes of the Emergency Medical Services (EMS) chapters of rules, the following definitions apply:
(7-1-14)

01. Optional Module. Optional modules (OMs) are skills identified by the EMS Physician Commission that exceed the floor level Scope of Practice for EMS personnel and may be adopted by the agency medical director.
(7-1-16)

02. Out-of-Hospital. Any setting outside of a hospital, including inter-facility transfers, in which the provision of EMS may take place.
(7-1-14)

03. Paramedic. A paramedic is a person who:
(7-1-14)

a. Has met the qualifications for licensure in Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.07, “Emergency Medical Services - Personnel Licensing Requirements”;
(7-1-14)

b. Is licensed by the EMS Bureau under Sections 56-1011 through 56-1023, Idaho Code;
(7-1-14)

c. Carries out the practice of emergency medical care within the scope of practice for paramedic determined by the Idaho Emergency Medical Services Physician Commission (EMSPC), under IDAPA 16.02.02, “Rules of the Idaho Emergency Medical Services (EMS) Physician Commission”; and
(7-1-14)

d. Practices under the supervision of a physician licensed in Idaho.
(7-1-14)

04. Paramedicine. Providing emergency care to sick and injured patients at the advanced life support (ALS) level with defined roles and responsibilities to be credentialed at the Paramedic level.
(7-1-16)

05. Part-Time Paid Personnel. Personnel who perform a service with the promise, expectation, or receipt of compensation for performing such services. Part-time personnel differ from the full-time personnel in that the part-time personnel typically work an irregular schedule and work less than thirty-five (35) hours per week.
(7-1-14)

06. Patient. A sick, injured, incapacitated, or helpless person who is under medical care or treatment.
(7-1-14)

07. Patient Assessment. The evaluation of a patient by EMS licensed personnel intending to provide treatment or transportation to that patient.
(7-1-14)

08. Patient Care. The performance of acts or procedures under emergency conditions in responding to a perceived individual need for immediate care in order to prevent loss of life, aggravation of physiological or psychological illness, or injury.
(7-1-14)

09. Patient Movement. The relatively short distance transportation of a patient from an off-highway emergency scene to a rendezvous with an ambulance or air ambulance.
(7-1-14)

10. Patient Transport. The transportation of a patient by ambulance or air ambulance from a rendezvous or emergency scene to a medical care facility.
(7-1-14)

11. Physician. A person who holds a current active license in accordance with Section 54-1803, Idaho Code, issued by the State Board of Medicine to practice medicine and surgery, osteopathic medicine and surgery, or osteopathic medicine in Idaho and is in good standing with no restrictions upon, or actions taken against, his license.
(7-1-14)

12. Physician Assistant. A person who meets all the applicable requirements and is licensed to practice as a licensed physician assistant under Title 54, Chapter 18, Idaho Code.
(7-1-14)

13. Planned Deployment. The deliberate, planned placement of EMS personnel outside of an affiliating agency’s deployment model declared on the application under which the agency is currently licensed.

- (7-1-14)
14. **Prehospital.** A setting where emergency medical care is provided prior to or during transport to a hospital. (7-1-16)
15. **Psychomotor Exam.** Practical demonstration of skills learned during an EMS education course. (7-1-16)
16. **REPLICA.** The Recognition of EMS Personnel Licensure Interstate Compact Act known as REPLICA that allows recognition of EMS personnel licensed in other jurisdictions that have enacted the Act to have personnel licenses reciprocated in the state of Idaho. ()
- ~~167.~~ **Response Time.** The total time elapsed from when the agency receives a call for service to when the agency arrives and is available at the scene. (7-1-14)
18. **Seasonal.** An agency that is active and operational only during a period of time each year that corresponds to the seasonal activity that the agency supports.. ()
- ~~179.~~ **Skills Proficiency.** The process overseen by an EMS agency medical director to verify competency in psychomotor skills. (7-1-14)
- ~~1820.~~ **State Health Officer.** The Administrator of the Division of Public Health. (7-1-14)
- ~~1921.~~ **Summative Evaluation.** End of topic or end of course evaluation that covers both didactic and practical skills application. (7-1-16)
- ~~202.~~ **Supervision.** The medical direction by a licensed physician of activities provided by licensed personnel affiliated with a licensed ambulance, air medical, or non-transport service, including: (7-1-14)
- a. Establishing standing orders and protocols; (7-1-14)
 - b. Reviewing performance of licensed personnel; (7-1-14)
 - c. Providing instructions for patient care via radio or telephone; and (7-1-14)
 - d. Other oversight. (7-1-14)
- ~~213.~~ **Third Service.** A public EMS agency that is neither law-enforcement nor fire-department based. (7-1-14)
- ~~224.~~ **Transfer.** The transportation of a patient from one (1) medical care facility to another. (7-1-14)
- ~~235.~~ **Uncompensated Volunteer.** An individual who performs a service without promise, expectation, or receipt of any compensation for the services rendered. An uncompensated volunteer cannot be a part-time or full-time employee of the same organization performing the same services as a volunteer and employee. (7-1-14)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.01.03 - EMERGENCY MEDICAL SERVICES (EMS) -- AGENCY LICENSING REQUIREMENTS

DOCKET NO. 16-0103-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-1011 through 56-1023, Idaho Code,

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Wednesday, September 28, 2016 - 10:30 am MDT

**Department of Health & Welfare
Bureau of EMS Preparedness
Boise, ID**

Teleconference Call-In:	Webinar:
<p>Dial in: 1 (562) 247-8422 Participant Code: 314-674-246</p>	<p>Participate through computer & Internet audio https://attendee.gotowebinar.com/register/3403979524131150850 PRE-REGISTRATION is required</p>

No physical hearing sites will be available. Participants will need to call in by phone or pre-register for the webinar and receive confirmation by e-mail for joining this public hearing.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Currently, requirements for data collection and submission by licensed EMS Agencies are found in this rule chapter. Those requirements are being removed from this chapter and a new chapter of rule is being written and published in this same Bulletin in IDAPA 16.01.06, "Emergency Medical Services (EMS) -- Data Collection and Submission Requirements," under Docket No. 16-0106-1601.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

The Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds or to the state general fund. This rulemaking is intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016, Idaho Administrative Bulletin, **Vol. 16-6, pages 32 and 33**, under Docket No. 16-0103-1601, EMS-Agency Licensing Requirement rules.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact John Cramer at (208) 334-4000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 5th Day of August, 2016.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5500 phone / (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0103-1601
(Only Those Sections With Amendments Are Shown.)**

535. EMS AGENCY -- RECORDS, DATA COLLECTION, AND SUBMISSION REQUIREMENTS.

Each EMS agency must comply with the following records, data collection, and submission requirements under IDAPA 16.01.06, "Emergency Medical Services (EMS) -- Data Collection and Submission Requirements." (7-1-16)()

~~01. **Records to be Maintained by Ambulance and Air Medical Agencies.** Each EMS ambulance and air medical agency must maintain records of each ambulance and air ambulance response and submit them to the EMS Bureau at least quarterly in a form approved by the EMS Bureau. These records must include at least the following information:~~ (7-1-16)

- ~~a. Name of ambulance service;~~ (7-1-16)
- ~~b. Date of response;~~ (7-1-16)
- ~~c. Time call received;~~ (7-1-16)
- ~~d. Time en route to scene;~~ (7-1-16)
- ~~e. Time arrival at scene;~~ (7-1-16)
- ~~f. Time service departed scene;~~ (7-1-16)
- ~~g. Time arrival at hospital;~~ (7-1-16)
- ~~h. Location of incident;~~ (7-1-16)
- ~~i. Description of illness/injury;~~ (7-1-16)
- ~~j. Description of patient management;~~ (7-1-16)
- ~~k. Patient destination;~~ (7-1-16)

- ~~l.~~ *Ambulance unit identification;* (7-1-16)
- ~~m.~~ *Identification and licensure level of each ambulance crew member on the response; and* (7-1-16)
- ~~n.~~ *Response outcome.* (7-1-16)
- ~~02.~~ **~~Records to Be Maintained by Non-Transport Agencies.~~** *Each non-transport agency must maintain records of each EMS response in a form approved by the EMS Bureau. Each applicant non-transport services agency who submits an application to the EMS Bureau after July 1, 2009, must submit records of each EMS response to the EMS Bureau at least quarterly in a form approved by the EMS Bureau. These records must include at least the following information:* (7-1-16)
- ~~a.~~ *Identification of non-transport service;* (7-1-16)
- ~~b.~~ *Date of response;* (7-1-16)
- ~~c.~~ *Time call received;* (7-1-16)
- ~~d.~~ *Time en route to scene;* (7-1-16)
- ~~e.~~ *Time arrival at scene;* (7-1-16)
- ~~f.~~ *Time service departed scene;* (7-1-16)
- ~~g.~~ *Location of incident;* (7-1-16)
- ~~h.~~ *Description of illness/injury;* (7-1-16)
- ~~i.~~ *Description of patient management;* (7-1-16)
- ~~j.~~ *Patient destination;* (7-1-16)
- ~~k.~~ *Identification and licensure level of non-transport service personnel on response; and* (7-1-16)
- ~~l.~~ *Response outcome.* (7-1-16)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.01.03 - EMERGENCY MEDICAL SERVICES (EMS) -- AGENCY LICENSING REQUIREMENTS

DOCKET NO. 16-0103-1602

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 18, 2016.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-1011 through 56-1023, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Wednesday, September 28, 2016 - 10:30 am MDT	
Department of Health and Welfare Bureau of EMS Preparedness Boise, ID	
Teleconference Call-In:	Webinar:
Dial in: 1 (562) 247-8422 Participant Code: 314-674-246	Participate through computer and Internet audio https://attendee.gotowebinar.com/register/ 3403979524131150850 PRE-REGISTRATION is required

No physical hearing sites will be available. Participants will need to call in by phone or pre-register for the webinar and receive confirmation by e-mail for joining this public hearing.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Department has received applications for EMS agency licensure for seasonal EMS agencies and from hospitals. The addition of an operational declaration for a hospital agency licensure will allow this service type to be licensed in Idaho. Seasonal duration for an EMS Agency is being added to allow an agency to license in a seasonal capacity. Also, changes are made for licensure requirements around EMS Air Medical Support. The amendments to these rules provide for these important emergency medical services in Idaho. The “Minimum Equipment Standards for Licensed EMS Services” is being updated and incorporated into these rules to give it the force and effect of law.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The EMS Agency rules do not contain language for an EMS agency to operate seasonally nor allow a hospital emergency department to obtain EMS agency licensure. Air medical support rules for agency licensure also need to be updated for this service. These temporary rules are needed to allow these types of licensures to become effective to as soon as possible to protect the public health, safety or welfare.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

The Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds or to the state general fund. This rulemaking is intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because the rule is temporary and needed to be in place to protect the public health, safety or welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, "Minimum Equipment Standards for Licensed EMS Services, Edition 2016-1," is being incorporated by reference into these rules to give it the force and effect of law. The document is not being reprinted in this chapter of rules due to its length and format and because of the cost for republication. The document may be found online at <http://www.idahoems.org>.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Bruce Cheeseman at (208) 334-4000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 18th Day of August, 2016

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5500 phone / (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 16-0103-1601
(Only Those Sections With Amendments Are Shown.)**

004. INCORPORATION BY REFERENCE.

The Board of Health and Welfare has adopted the "Minimum Equipment Standards for Licensed EMS Services," edition 201~~4~~⁶, version 1.0, as its standard for minimum equipment requirements for licensed EMS Agencies and incorporates it by reference. Copies of these standards may be obtained from the Department, as described in Section 005 of these rules, or online at: <http://www.idahoems.org>. ~~(7-1-14)~~(8-18-16)T

(BREAK IN CONTINUITY OF SECTIONS)

201. EMS AGENCY -- SERVICE TYPES.

An EMS agency may be licensed as one (1) or more service types. An agency that provides multiple service types must meet the minimum requirements for each service type provided. The following are the agency services types available for EMS agency licensure. (7-1-14)

- 01. Ground Agency Service Types.** (7-1-14)
- a. Non-transport.** (7-1-14)

- b. Ambulance. (7-1-14)
- 02. Air Medical Agency Service Types. (7-1-14)
 - a. Air Medical ~~1~~. ~~(7-1-14)~~(8-18-16)T
 - b. Air Medical ~~1~~ **Support**. ~~(7-1-14)~~(8-18-16)T

202. EMS AGENCY -- CLINICAL LEVELS.

An EMS agency is licensed at one (1) or more of the following clinical levels depending on the agency's highest level of licensed personnel and life support services advertised or offered. (7-1-14)

- 01. Non-transport. (7-1-14)
 - a. EMR/BLS; (7-1-14)
 - b. EMT/BLS; (7-1-14)
 - c. AEMT/ILS; or (7-1-14)
 - d. Paramedic/ALS. (7-1-14)
- 02. Ambulance. (7-1-14)
 - a. EMT/BLS; (7-1-14)
 - b. AEMT/ILS; (7-1-14)
 - c. Paramedic/ALS; or (7-1-14)
 - d. Paramedic/ALS Critical Care. (7-1-14)
- 03. Air Medical ~~1~~. ~~(7-1-14)~~(8-18-16)T
 - a. Paramedic/ALS; or (7-1-14)
 - b. Paramedic/ALS Critical Care. (7-1-14)
- 04. Air Medical ~~1~~ **Support**. ~~(7-1-14)~~(8-18-16)T
 - a. EMT/BLS; ~~or~~ ~~(7-1-14)~~(8-18-16)T
 - b. AEMT/ILS; ~~or~~ ~~(7-1-14)~~(8-18-16)T
 - c. **Paramedic/ALS**. (8-18-16)T

203. EMS AGENCY -- LICENSE DURATION.

Each EMS agency must identify the license duration for each license type. License durations are: (7-1-14)

- 01. **Ongoing**. The agency is licensed to provide EMS personnel and equipment for an ongoing period of time and plans to renew its license on an annual basis. (7-1-14)
- 02. **Limited**. The agency is licensed to provide EMS personnel and equipment for the duration of a specific event or a specified period of time with no expectation of renewing the agency license. (7-1-14)
- 03. **Seasonal**. The agency is licensed to provide EMS personnel and equipment for the duration of time each year that corresponds to the seasonal activity that the agency supports. (8-18-16)T

204. GROUND EMS AGENCY -- OPERATIONAL DECLARATIONS.

An agency providing ground services is licensed with one (1) or more of the following operational declarations depending on the services that the agency advertises or offers. (7-1-14)

01. Prehospital. The prehospital operational declaration is available to an agency that: (7-1-16)

a. Has primary responsibility for responding to calls for EMS within their designated geographic coverage area; and (7-1-16)

b. Is dispatched to prehospital emergency medical calls by a consolidated emergency communications system. (7-1-16)

02. Prehospital Support. The prehospital support operational declaration is available to an agency that: (7-1-16)

a. Provides support under agreement to a prehospital agency having primary responsibility for responding to calls for EMS within a designated geographic coverage area; and (7-1-16)

b. Is dispatched to prehospital emergency medical calls by a consolidated emergency communications system. (7-1-16)

03. Community Health EMS. The community health EMS operational declaration is available to an agency with a prehospital operational declaration or prehospital support operational declaration that provides personnel and equipment for medical assessment and treatment at a non-emergency scene or at the direction of a physician or independent practitioner. (7-1-16)

04. Transfer. The transfer operational declaration is available to an ambulance agency that provides EMS personnel and equipment for the transportation of patients from one (1) medical care facility in their designated geographic coverage area to another. An agency with this operational declaration must declare which sending facilities it routinely responds to if requested. (7-1-14)

05. Standby. The standby operational declaration is available to an agency that provides EMS personnel and equipment to be staged at prearranged events within their designated geographic coverage area. (7-1-14)

06. Non-Public. The non-public operational declaration is available to an agency that provides EMS personnel and equipment intended to treat patients who are employed or contracted by the license holder. An agency with a non-public operational declaration is not intended to treat members of the general public. A non-public agency must maintain written plans for patient treatment and transportation. (7-1-14)

07. Hospital. The hospital operational declaration is available to an agency whose primary responsibility is hospital or clinic activity and utilizes licensed EMS personnel in its facility to assist with patient care and movement. (8-18-16)T

(BREAK IN CONTINUITY OF SECTIONS)

211. AIR MEDICAL EMS AGENCY -- PATIENT TRANSPORT ~~OR~~ TRANSFER, OR SUPPORT.

An agency that is licensed with an air medical service type is intended for patient transport ~~or~~ transfer, or support. (7-1-14)(8-18-16)T

01. Transport. An air medical agency that provides the operational declaration of air medical transport may provide transportation of patients from a rendezvous or emergency scene to a medical care facility. (7-1-14)

02. Transfer. An air medical agency that provides the operational declaration of air medical transfer can provide transportation of patients from one (1) medical care facility within their designated geographic coverage area to another. (7-1-14)

03. Support. An air medical agency that provides the operational declaration of air medical support can provide patient movement from a remote area or scene to a rendezvous point where care will be transferred to another licensed air medical or ground transport service for transport to definitive care. An air medical support agency must report all patient movement events to the Department within thirty (30) days of the event. (8-18-16)T

(BREAK IN CONTINUITY OF SECTIONS)

302. AIR MEDICAL EMS AGENCY -- PERSONNEL REQUIREMENTS.

Each air medical agency must ensure that there are two (2) crew members, not including the pilot, on each patient transport or transfer. The crew member providing patient care, at a minimum, must be a licensed EMT. An air medical agency must also demonstrate that the following exists. (7-1-14)

01. Personnel for Air Medical ~~I~~ Agency. An Air Medical ~~I~~ agency must ensure that each flight includes at a minimum, one (1) licensed professional nurse and one (1) Paramedic. Based on the patient's need, an exception for transfer flights may include a minimum of one (1) licensed respiratory therapist and one (1) licensed professional nurse, or two (2) licensed professional nurses. ~~(7-1-14)~~(8-18-16)T

02. Personnel for Air Medical ~~H~~ Support Agency. An Air Medical ~~H~~ Support agency must ensure that each flight includes at a minimum, two (2) ~~licensed patient care providers~~ crew members with one (1) patient care provider licensed at or above the agency's highest clinical level of licensure. ~~(7-1-14)~~(8-18-16)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

**16.01.06 - EMERGENCY MEDICAL SERVICES (EMS) --
DATA COLLECTION AND SUBMISSION REQUIREMENTS**

DOCKET NO. 16-0106-1601 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-1011 through 56-1023, Idaho Code,

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Wednesday, September 28, 2016 - 10:30 am MDT	
Department of Health & Welfare Bureau of EMS Preparedness Boise, ID	
Teleconference Call-In:	Webinar:
Dial in: 1 (562) 247-8422 Participant Code: 314-674-246	Participate through computer & Internet audio https://attendee.gotowebinar.com/register/ 3403979524131150850 PRE-REGISTRATION is required

No physical hearing sites will be available. Participants will need to call in by phone or pre-register for the webinar and receive confirmation by e-mail for joining this public hearing.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This new chapter of rules is being written to implement and provide for the collection and submission of data by licensed EMS Agencies to provide needed information concerning data collected by Emergency Medical Services throughout the state. These requirements will provide valuable information to help the state make informed decisions on what types of EMS services are needed to protect the health, safety or welfare of Idahoans and others within the state. These rules incorporate by reference a standards manual that provides the data elements that will be required for reporting.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

The Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds or to the state general fund. This rulemaking is intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016, Idaho Administrative Bulletin, **Vol. 16-6, pages 32 and 33**, under Docket No. 16-0103-1601, EMS-Agency Licensing Requirements.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, "The EMS Data Collection Standards Manual, Edition 2017-1," is being incorporated by reference into these rules to give it the force

and effect of law. The document is not being reprinted in this chapter of rules due to its length and format and because of the cost for republication. The document may be found online at <http://www.idahoems.org/>.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact John Cramer at (208) 334-4000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 5th Day of August, 2016

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5500 phone / (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0106-1601

**IDAPA 16
TITLE 01
CHAPTER 06**

**16.01.06 - EMERGENCY MEDICAL SERVICES (EMS) --
DATA COLLECTION AND SUBMISSION REQUIREMENTS**

000. LEGAL AUTHORITY.

The Idaho Board of Health and Welfare is authorized under Section 56-1023, Idaho Code, to adopt rules and standards concerning the administration of the Idaho Emergency Medical Services Act, Sections 56-1011 through 56-1023, Idaho Code. The Director is authorized under Section 56-1003, Idaho Code, to supervise and administer an emergency medical services program. ()

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 16.01.06, "Emergency Medical Services (EMS) -- Data Collection and Submission Requirements." ()

02. Scope. These rules contain the requirements for licensed EMS agencies to collect and report essential data information related to the performance, needs, and assessments of the statewide emergency medical services system. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, the Department may have written statements that pertain to the interpretation of this chapter. ()

003. ADMINISTRATIVE APPEALS.

Administrative appeals and contested cases are governed by the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ()

004. INCORPORATION BY REFERENCE.

The EMS Data Collection Standards Manual, Edition 2017-1, is incorporated by reference in this chapter of rules. Copies of the manual may be obtained online at <http://www.idahoems.org/> or from the Bureau of Emergency Medical Services and Preparedness located at 2224 East Penitentiary Road, Boise, ID 83712-8249. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ()

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, ID 83720-0036. ()

03. Street Address. ()

a. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, ID 83702. ()

b. The Bureau of Emergency Medical Services and Preparedness is located at 2224 East Old Penitentiary Road, Boise, ID 83712-8249. ()

04. Telephone. ()

a. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ()

b. The telephone number for the Bureau of Emergency Medical Services and Preparedness is (208) 334-4000. The toll-free phone number is 1 (877) 554-3367. ()

05. Internet Websites. ()

a. The Department Internet website is found at <http://www.healthandwelfare.idaho.gov>. ()

b. The Bureau of Emergency Medical Services and Preparedness internet website is found at <http://www.idahoems.org>. ()

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.

01. Confidentiality of Records. ()

a. Any information about an individual covered by these rules and contained in Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." ()

b. EMS Response records and data collected or otherwise captured by the Bureau of Emergency Medical Services and Preparedness, its agents, or designees, will be deemed to be confidential and released in accordance with applicable Department policies and applicable state and federal laws. ()

02. Public Records Act. The Department will comply with Title 74, Chapter 1, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ()

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. EMS Definitions. For the purposes of this chapter, the definitions in IDAPA 16.01.02, "Emergency Medical Services (EMS) - Rule Definitions," apply. ()

02. NEMSIS Data Dictionary. For the purposes of this chapter, definitions in the NEMSIS Data Dictionary apply. The NEMSIS website is at <http://www.nemsis.org>. ()

011. -- 074. (RESERVED)

075. INVESTIGATION OF COMPLAINTS FOR EMS DATA COLLECTION OR SUBMISSION VIOLATIONS.

Investigation of complaints and disciplinary actions for EMS data collection and submission requirement violations are provided under IDAPA 16.01.12, "Emergency Medical Services (EMS) - Complaints, Investigations, and Disciplinary Actions." ()

076. ADMINISTRATIVE LICENSE OR CERTIFICATION ACTION.

Any license or certification may be suspended, revoked, denied, or retained with conditions for noncompliance with any standard or rule. Administrative license or certification actions, including fines, imposed by the EMS Bureau for any action, conduct, or failure to act that is inconsistent with the professionalism, or standards, or both, are provided under Sections 56-1011 through 56-1023, Idaho Code, and IDAPA 16.01.12, "Emergency Medical Services (EMS) - Complaints, Investigations, and Disciplinary Actions." ()

077. -- 099. (RESERVED)

100. EACH EMS AGENCY MUST COMPLY WITH THE FOLLOWING RECORDS, DATA COLLECTION, AND SUBMISSION REQUIREMENTS.

Each licensed EMS agency must collect and submit EMS response records to the EMS Bureau using the Idaho Prehospital Electronic Record Collections System known as PERCS. ()

01. Records to be Maintained. Each licensed EMS agency must maintain a record that includes a Patient Care Report completed for each EMS Response. ()

02. Records to be Submitted. Each licensed EMS Agency must ensure that an accurate and complete electronic Patient Care Report (ePCR) is submitted to the EMS Bureau using approved and validated software in a format determined by the Department. ()

03. Time Frame for Submitting Records. Each licensed EMS agency must submit each month's data to the Department by the 15th of the following month in a format determined by the Department. ()

101. -- 104. (RESERVED)

105. EMS RESPONSE RECORDS AND DATA COLLECTED.

EMS response records and data collected from licensed EMS agencies or otherwise captured by the EMS Bureau, its agents, or designees, are deemed to be confidential and can only be released in accordance with applicable Department policies, state and federal laws, and this chapter of rules. ()

106. -- 109. (RESERVED)

110. USE OF SUBMITTED RECORDS AND DATA.

Records and data submitted to the Department, may be used by Department staff and staff or other designated agencies in the performance of its regulatory duties. ()

01. Data Reports. Data may be compiled into reports by a licensed emergency medical service agency from the respective agency's collected records. ()

02. Patient Care Reports. Aggregate patient care report data may be released to the public in a format reasonably calculated to not disclose the identity of the individual patient. ()

111. -- 199. (RESERVED)

200. DATA TO BE REPORTED.

The required data and information on an EMS Response is based on the definitions and structure of National Emergency Medical Services Information System (NEMSIS). NEMSIS defined data points to be reported to the Department for each EMS Response are provided in the “EMS Data Collection Standards Manual,” incorporated by reference in Section 004 of these rules. ()

201. -- 999. (RESERVED)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.01.07 - EMERGENCY MEDICAL SERVICES (EMS) -- PERSONNEL LICENSING REQUIREMENTS

DOCKET NO. 16-0107-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-1011 through 56-1023, Idaho Code, and Senate Bill 1281 (2016), including Sections 56-1013B through 56-1013Q, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Wednesday, September 28, 2016 - 10:30 am MDT

**Department of Health and Welfare
Bureau of EMS Preparedness
Boise, ID**

Teleconference Call-In:	Webinar:
<p>Dial in: 1 (562) 247-8422 Participant Code: 314-674-246</p>	<p>Participate through computer & Internet audio https://attendee.gotowebinar.com/register/3403979524131150850 PRE-REGISTRATION is required</p>

No physical hearing sites will be available. Participants will need to call in by phone or pre-register for the webinar and receive confirmation by e-mail for joining this public hearing.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The 2016 Legislature adopted the Recognition of EMS Personnel Licensure Interstate Compact Act (REPLICA). These rule changes will allow EMS personnel from other states who have met the requirements under REPLICA to become licensed in Idaho.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

The Emergency Medical Services (EMS) program is funded through dedicated funds. This rulemaking has no fiscal impact to those funds or to the state general fund. This rulemaking is intended to be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because it is being done simply to align the chapter with SB 1281 passed by the 2016 Idaho Legislature. These changes will allow reciprocity for EMS personnel licensed in other states that have adopted REPLICA.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Bruce Cheeseman at (208) 334-4000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 5th Day of August, 2016

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5500 phone / (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0107-1601
(Only Those Sections With Amendments Are Shown.)**

102. ~~104.~~ (RESERVED)

103. RECOGNITION OF EMS PERSONNEL LICENSURE INTERSTATE COMPACT ACT (REPLICA) AFFILIATION.

01. Licensed EMS Personnel from a REPLICA State. Licensed EMS personnel from a REPLICA state whose primary affiliation is an Idaho-licensed EMS agency must apply for Idaho EMS licensure within ninety (90) days of affiliation with an Idaho EMS agency. ()

02. Out-of-State Primary Affiliation. If EMS personnel licensed in another REPLICA state and they claim an EMS agency in that state as their primary affiliation, Idaho licensure is not required. ()

104. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

115. EMS PERSONNEL LICENSE DURATION.

Duration of a personnel license is determined using the following specified time intervals. (3-29-12)

01. Initial License Duration for EMR and EMT Level Licensure. EMR and EMT personnel licenses expire on March 31 or September 30. Expiration dates for EMR and EMT initial licenses are set for not less than thirty-six (36) months and not more than forty-two (42) months from the date of successful certification examination completion in order to establish an expiration date of March 31 or September 30. (3-29-12)

02. Initial License Duration for AEMT and Paramedic Level Licensure. AEMT and Paramedic personnel licenses expire on March 31 or September 30. Expiration dates for AEMT and Paramedic initial licenses are set for not less than twenty-four (24) months and not more than thirty (30) months from the date of successful certification examination completion in order to establish an expiration date of March 31 or September 30. (3-29-12)

03. EMS Personnel License Renewal Duration for EMR and EMT Level Licensure. An EMR and EMT level personnel license is renewed for three (3) years. (3-29-12)

04. EMS Personnel License Renewal Duration for AEMT and Paramedic Level Licensure. An AEMT and Paramedic level personnel license is renewed for two (2) years. (3-29-12)

05. EMS REPLICA Licensure Duration. EMS personnel from another REPLICA state who become

licensed in Idaho will have their Idaho EMS license expire March 31 or September 30 following the expiration of their EMS license from the original state. ()

116. PERSONNEL LICENSE TRANSITION.

Between the years of 2011 and 2017, the scope of practice and the accompanying license levels for EMS personnel will change. The scope of practice for licensed EMS personnel is provided in IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission." Personnel licensed at the AEMT level can opt to either transition to the AEMT-2011 level, or they may remain at the AEMT-1985 level. In order to renew a license, personnel licensed at the EMR, EMT, or Paramedic level must transition and meet the following requirements: (7-1-16) ()

~~**01. General Transition Requirements for Licensed Personnel.** Licensed personnel transitioning to a new licensure level must:~~ (3-29-12)

~~**a.** Successfully complete an Idaho-approved transition course appropriate for the level of licensure;~~ (3-29-12)

~~**b.** Provide documentation of verification by the course physician of competency in the knowledge and skills identified in the appropriate transition course curriculum; and~~ (3-29-12)

~~**c.** Include proof of completion of transition requirements with the license renewal application. All other license renewal requirements listed in Section 120 of these rules must be completed. The transition course may be counted towards the renewal continuing education requirements.~~ (3-29-12)

~~**02. Application Deadlines for Transition of Licensed Personnel.** Licensed personnel who choose to transition must submit an "EMS Personnel License Transition Application" according to the following deadline dates:~~ (3-29-12)

~~**a.** For personnel licensed at the EMR and EMT levels, an application for transition must be submitted after January 1, 2012, and before March 31, 2017, according to the effective date of the initial license or renewal date provided in the table below:~~

Table 116.02.a.	
PERSONNEL LICENSED AT EMR AND EMT LEVELS — TRANSITION DEADLINE DATES	
Effective Date of Renewed License	Date Transition Requirements MUST be Completed
October 1, 2013	September 30, 2016
April 1, 2014	March 31, 2017

(7-1-16)

~~**03. Early Transition of Licensed Personnel.** Licensed personnel who meet all transition requirements and choose to transition prior to their license renewal date will be issued a license as follows:~~ (3-29-12)

~~**a.** Continuing education completed between the effective date of the pre-transition license and the expiration date of the transitioned license may be used to meet requirements listed in Section 120 of these rules for renewal of the transition license;~~ (3-29-12)

~~**b.** The new license will have the same expiration date as the current license; and~~ (3-29-12)

~~**c.** The new license will have a new effective date, based on the date the transition was approved by the EMS Bureau.~~ (3-29-12)

117. ~~119.~~ (RESERVED)

118. REPLICA EXPIRATION.

EMS personnel from another REPLICA state who become licensed in Idaho will have their Idaho license expire on

March or September following the expiration of their license in the original state.

()

119. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

131. REINSTATEMENT OF A LAPSED EMS PERSONNEL LICENSE.

An individual desiring to reinstate a lapsed personnel license must provide documentation that he meets the following requirements: (3-29-12)

01. Declaration of Previous Applications and Licensures. A reinstatement candidate must declare each state or jurisdiction in which he has applied for, been denied, or held an EMS license or certification. (3-29-12)

02. Authorization for Release of Information. A reinstatement candidate must provide authorization for the EMS authority in other states or jurisdictions to release the candidate's registration, licensure, and certification information to the Idaho EMS Bureau. (3-29-12)

03. Provide Current Affiliation with EMS Agency. A reinstatement candidate must declare all organizations in which they are allowed to practice as licensed personnel. The candidate must have a current affiliation with a licensed EMS agency that functions at, or above, the level of licensure being sought by the candidate. (3-29-12)

04. Documentation of Continuing Education for Lapsed License Reinstatement. A candidate for reinstatement of a lapsed license must provide documentation of continuing education consistent with the license holder's lapsed license. Continuing education requirements are provided in Sections 300 through 325 of these rules. The time frame for meeting the continuing education requirements for reinstatement are as follows: (7-1-16)

a. The candidate must meet continuing education requirements under Sections 320 through 325 of these rules for the last valid licensure cycle; and (7-1-16)

b. Additional continuing education hours in any combination of categories and venues, proportionate to the amount of time since the expiration date of the lapsed license, as follows: (3-29-12)

i. EMR -- Three-quarters (3/4) of one (1) hour of continuing education per month of lapsed time. (3-29-12)

ii. EMT -- One and one-half (1 ½) hours of continuing education per month of lapsed time. (3-29-12)

iii. AEMT -- Two and one-quarter (2 ¼) hours of continuing education per month of lapsed time. (3-29-12)

iv. Paramedic -- Three (3) hours of continuing education per month of lapsed time. (3-29-12)

05. Valid Identification for Reinstatement of Lapsed License. A reinstatement candidate must have a valid state driver's license, an Idaho identification card which is issued by a county driver's license examining station, or identification card issued by the Armed Forces of the United States. (3-29-12)

06. Criminal History and Background Check for Reinstatement of Lapsed License. A reinstatement candidate must successfully complete a criminal background check under the provisions in IDAPA 16.05.06, "Criminal History and Background Checks." Denial without the grant of an exemption under IDAPA 16.05.06 will result in denial of reinstatement of licensure. (3-29-12)

07. Pass Standardized Examination for Reinstatement. A reinstatement candidate must successfully complete the standardized examination for the lapsed level of licensure required under IDAPA 16.01.05, "Emergency Medical Services (EMS) -- Education, Instructor, and Examination Requirements." A candidate for reinstatement

must successfully complete the standardized examination within the time period during which the license was lapsed. (7-1-16)

08. Standardized Exam Attempts For Reinstatement. A candidate for licensure reinstatement is allowed to attempt to successfully pass the standardized exam as follows: (3-29-12)

a. An EMR candidate is allowed three (3) attempts to pass the exam, after which the initial EMR course must be successfully completed again before another three (3) attempts are allowed. (3-29-12)

b. An EMT candidate is allowed three (3) attempts to pass the exam, after which twenty-four (24) hours of remedial education must be successfully completed before another three (3) attempts are allowed. (3-29-12)

c. An AEMT candidate is allowed three (3) attempts to pass the exam, after which thirty-six (36) hours of remedial education must be successfully completed before another three (3) attempts are allowed. (3-29-12)

d. A Paramedic candidate is allowed three (3) attempts to pass the exam, after which forty-eight (48) hours of remedial education must be successfully completed before another three (3) attempts are allowed. (3-29-12)

09. Submit Required Licensure Fee for Reinstatement. A candidate must submit the applicable reinstatement license fee provided in Section 111 of these rules. A candidate for reinstatement of an EMR or EMT level of licensure has no fee requirement. (3-29-12)

10. Expiration Date of a Reinstated License. The expiration date for a lapsed license that is reinstated is determined as provided in Section 115 of these rules. (3-29-12)

~~**11. Reinstatement During Transition.** A candidate may reinstate his lapsed license only if he has completed transition requirements for his level of licensure. Education obtained in a transition course may be used to meet the CEU requirements for reinstatement according to Section 300 of these rules. (3-29-12)~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

**16.02.19 - FOOD SAFETY AND SANITATION STANDARDS FOR FOOD ESTABLISHMENTS
(THE IDAHO FOOD CODE)**

DOCKET NO. 16-0219-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 37-121 and 39-1603, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Thursday, September 15, 2016 - 1:30 pm (Local Time)

**Department of Health & Welfare
450 W. State Street
4th Floor Conference Room
Boise, ID**

Via Teleconference Call-In

**Toll Free: 1-877-820-7831
Participant Code: 738839**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Idaho Food Code rules are being amended to update the terminology used during inspections of retail food establishments by adding definitions of “risk factor” and “good retail practices.” The inspection process for scoring for food safety practices during an inspection is also being updated to reflect the added terminology.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

There is no anticipated fiscal impact to state general funds or any other funds due to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted nor feasible because the changes being made are of a simple nature to add clarification for food safety inspectors when making on-site inspections.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, no materials are being incorporated by reference into these rules with this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Patrick Guzzle, at (208) 334-5936.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 5th Day of August, 2016.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5500 phone / (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0219-1601
(Only Those Sections With Amendments Are Shown.)

110. DEFINITIONS AND ABBREVIATIONS -- A THROUGH K.

The definitions defined in this section are modifications or additions to the definitions and terms provided in the 2013 Food Code. (7-1-16)

01. Agricultural Market. Any venue where a fixed or mobile retail food establishment can engage in the sale of raw or fresh fruits, vegetables, and nuts in the shell. It may also include the sale of factory sealed non-time/temperature control for safety foods (non-TCS). Agricultural market means the same as “farmers market” or “roadside stand.” (7-1-16)

02. Board. The State of Idaho Board of Health and Welfare as established in Section 56-1005, Idaho Code. (4-6-05)

03. Commissary. A commissary is a place where food containers or supplies are stored, prepared, or packaged for transit, sale, or service at other locations. (7-1-16)

04. Consent Order. A consent order is an enforceable agreement between the regulatory authority and the license holder to correct violations that caused the actions taken by the regulatory authority. (4-6-05)

05. Core Item. Modifications to Section 1-201.10(B) by amending the term “core item” to mean the same as “non-critical item.” (7-1-16)

06. Cottage Food Operation. A cottage food operation is when a person or business prepares or produces cottage food products in the home kitchen of that person's primary residence or other designated kitchen or location. (7-1-16)

07. Cottage Food Product. Cottage food products are non-time/temperature control for safety (non-TCS) foods that are sold directly to a consumer. Examples of cottage foods may include but are not limited to: baked goods, fruit jams and jellies, fruit pies, breads, cakes, pastries and cookies, candies and confections, dried fruits, dry herbs, seasonings and mixtures, cereals, trail mixes and granola, nuts, vinegar, popcorn and popcorn balls, and cotton candy. (7-1-16)

08. Critical Item. A provision of this code that if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazard. A critical item includes items with a quantifiable measure to show control of hazards such as but not limited to, cooking, reheating, cooling, and hand washing. Critical item means the same as “priority item.” Critical item is an item that is denoted with a superscript (P), (7-1-16)

09. Department. The Idaho Department of Health and Welfare as established in Section 56-1002,

Idaho Code. (4-6-05)

10. Director. The Director of the Idaho Department of Health and Welfare as established in Section 56-1003, Idaho Code. (4-6-05)

11. Embargo. An action taken by the regulatory authority that places a food product or equipment used in food production on hold until a determination is made on the product's safety. (4-6-05)

12. Enforcement Inspection. An inspection conducted by the regulatory authority when compliance with these rules by a food establishment is lacking and violations remain uncorrected after the first follow-up inspection to a routine inspection. (4-6-05)

13. Farmers Market. Any fixed or mobile retail food establishment at which farmer producers sell agricultural products directly to the general public. Farmers market means the same as "agricultural market" and "roadside stand." (7-1-16)

14. Food Establishment. Modifications to Section 1-201.10 amends the definition of "food establishment" as follows: (7-1-16)

a. Delete Subparagraph 3(c) of the term "food establishment" in the 2013 Food Code; (7-1-16)

b. Add Subparagraph 3(h) to the term "food establishment" to clarify that a cottage food operation is not a food establishment. (7-1-16)

15. Food Processing Plant. Modification to Section 1-201.10 amends the definition of "food processing plant" by deleting Subparagraph 2 of the term "food processing plant" in the 2013 Food Code. (7-1-16)

16. Good Retail Practice Violation. Good retail practice violation means the preventive measures that include practices and procedures which effectively control the introduction of pathogens, chemicals, and physical objects into food. ()

167. High-Risk Food Establishment. A high-risk food establishment does the following operations: (4-6-05)

a. Extensive handling of raw ingredients; (4-6-05)

b. Preparation processes that include the cooking, cooling and reheating of time/temperature control for safety (TCS) foods; or (7-1-16)

c. A variety of processes requiring hot and cold holding of time/temperature control for safety (TCS) foods. (7-1-16)

178. Intermittent Food Establishment. An intermittent food establishment is a food vendor that operates for a period of time, not to exceed three (3) days per week, at a single, specified location in conjunction with a recurring event and that offers time/temperature control for safety (TCS) foods to the general public. Examples of a recurring event may be a farmers' or community market, or a holiday market. An intermittent food establishment does not include the vendor of farm fresh ungraded eggs at a recurring event (7-1-16)

111. DEFINITIONS AND ABBREVIATIONS -- L THROUGH Z.

The definitions defined in this section are modifications or additions to the definitions and terms provided in the 2013 Food Code. (7-1-16)

01. License. The term "license" is used in these rules the same as the term "permit" is used in the 2013 Food Code. (7-1-16)

02. License Holder. The term "license holder" is used in these rules the same as the term "permit holder" is used in the 2013 Food Code. (7-1-16)

03. Low-Risk Food Establishment. A low-risk food establishment provides factory-sealed pre-packaged non-time/temperature control for safety (non-TCS) foods. The establishment may have limited preparation of non-time/temperature control for safety (non-TCS) foods only. (7-1-16)

04. Medium-Risk Food Establishment. A medium-risk food establishment includes the following: (4-6-05)

- a. A limited menu of one (1) or two (2) items; or (4-6-05)
- b. Pre-packaged raw ingredients cooked or prepared to order; or (4-6-05)
- c. Raw ingredients requiring minimal assembly; or (4-6-05)
- d. Most products are cooked or prepared and served immediately; or (4-6-05)
- e. Hot and cold holding of time/temperature control for safety (TCS) foods is restricted to single meal service. (7-1-16)

05. Mobile Food Establishment. A mobile food establishment is a food establishment selling or serving food for human consumption from any vehicle or other temporary or itinerant station and includes any movable food service establishment, truck, van, trailer, pushcart, bicycle, watercraft, or other movable food service with or without wheels, including hand-carried, portable containers in or on which food or beverage is transported, stored, or prepared for retail sale or given away at temporary locations. (7-1-16)

06. Non-Critical Item. A non-critical item is a provision of this Code that is not designated as a critical item or potentially-critical item. A non-critical item includes items that usually relate to general sanitation, operation controls, sanitation standard operating procedures (SSOPs), facilities or structures, equipment design, or general maintenance. Non-critical item means the same as CORE ITEM. (7-1-16)

07. Potentially-Critical Item. A potentially-critical item is a provision in this Code whose application supports, facilitates, or enables one (1) or more critical items. Potentially critical item includes an item that requires the purposeful incorporation of specific actions, equipment, or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure or necessary equipment, HACCP plans, documentation or record keeping, and labeling. Potentially-critical item means the same as priority foundation item. A potentially-critical item is an item that is denoted in this code with a superscript (Pf). (7-1-16)

08. Priority Item. Modification to Section 1-201.10(B) by amending the term “priority item” to read priority item means the same as critical item. (7-1-16)

09. Priority Foundation Item. Modification to Section 1-201.10(B) by amending the term “priority foundation item” to read priority foundation item means the same as potentially-critical item. (7-1-16)

10. Regulatory Authority. The Department or its designee is the regulatory authority authorized to enforce compliance of these rules. (4-6-05)

a. The Department is responsible for preparing the rules, rule amendments, standards, policy statements, operational procedures, program assessments and guidelines. (4-6-05)

b. The seven (7) Public Health Districts and the Division of Licensing and Certification have been designated by the Director as the regulatory authority for the purpose of issuing licenses, collecting fees, conducting inspections, reviewing plans, determining compliance with the rules, investigating complaints and illnesses, examining food, embargoing food and enforcing these rules. (7-1-16)

11. Risk Control Plan. Is a document describing the specific actions to be taken by the license holder to address and correct a continuing hazard or risk within the food establishment. (4-6-05)

12. Risk Factor Violation. Risk factor violation means improper practices or procedures which are most frequently identified by epidemiologic investigation as a cause of foodborne illness or injury. ()

13. Roadside Stand. Any fixed or mobile retail food establishment at which an individual farmer producer sells own agricultural products directly to consumers. Roadside stand means the same as “agricultural market” and “farmers market.” (7-1-16)

(BREAK IN CONTINUITY OF SECTIONS)

841. INSPECTION SCORES.

The regulatory authority must provide the license holder an inspection report with a total score indicating the number of ~~critical item~~ risk factor violations and the number of repeat ~~critical~~ risk factor violations added together. Repeat violations are those observed during the last inspection. The inspection report will also score the total number of ~~potentially critical violations and non-critical~~ good retail practice violations and the number of repeat ~~potentially critical violations and non-critical~~ good retail practice violations. These scores will be used to determine if a follow-up inspection or a written report of correction is needed to verify corrections have been made. (7-1-16)()

01. Medium-Risk Food Establishment. If the ~~critical~~ risk factor violations exceed three(3), ~~or the potentially critical violations exceed six (6),~~ or ~~non-critical~~ good retail practice violations exceed eight (8), an on-site follow-up inspection is required for verification of correction by the regulatory authority. (7-1-16)()

02. High-Risk Food Establishment. If the ~~critical~~ risk factor violations exceed five (5), ~~or the potentially critical violations exceed eight (8),~~ or ~~non-critical~~ good retail practice violations exceed eight (8), an on-site follow-up inspection is required for verification of correction by the regulatory authority. (7-1-16)()

03. Written Violation Correction Report. A written violation correction report by the license holder may be provided to the regulatory authority if the total inspection score of the food establishment does not exceed those listed in Section 845 of these rules. The report must be mailed within five (5) days of the correction date identified on the inspection report. (4-6-05)

842. -- 844. (RESERVED)

845. VERIFICATION AND DOCUMENTATION OF CORRECTION.

In addition to Section 8-405.20 of the 2013 Food Code, the on-site follow-up inspection may not be required for verification of correction if the regulatory authority chooses to accept a written report of correction from the license holder. (7-1-16)

01. Written Report of Correction. The regulatory authority may choose to accept a written report of correction from the license holder stating that specific violations have been corrected. The license holder must submit this report to the regulatory authority within five (5) days after the correction date identified on the inspection report. (4-6-05)

a. Medium-risk food establishment. If the ~~critical~~ risk factor violations do not exceed three (3), ~~or the potentially critical violations do not exceed six (6),~~ or the ~~non-critical~~ good retail practice violations do not exceed six (6), a follow-up inspection is not required for verification of correction. (7-1-16)()

b. High-risk food establishment. If the ~~critical~~ risk factor violations do not exceed five (5), ~~or the potentially critical violations do not exceed eight (8),~~ or the ~~non-critical~~ good retail practice violations do not exceed eight (8), a follow-up inspection is not required for verification of correction. (7-1-16)()

02. Risk Control Plan. The regulatory authority may require the development of a risk control plan as verification of correction. The risk control plan must provide documentation on how the license holder will obtain long term correction of critical violations that are repeated violations, including how control will be monitored and who will be responsible. (4-6-05)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.19. - RULES GOVERNING CERTIFIED FAMILY HOMES

DOCKET NO. 16-0319-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-3505, and 56-1005, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

These rule changes are required to align the Rules Governing Certified Family Homes with Idaho Code, specifically:

1. Provides an exemption to certification for VA Medical Foster Homes, as defined in Sections 39-3502 and 39-3512, Idaho Code, and
2. Amends the requirements for termination of the admission agreement since current rules concerning notification of termination are not consistent with requirements in Title 55, Chapter 2, and Title 6, Chapter 3, Idaho Code.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

There is no anticipated fiscal impact to the State General Fund or to dedicated funds for this rule change. This rulemaking is intended to be cost neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 6, 2016, Idaho Administrative Bulletin, [Vol. 16-4, page 32](#), and in the May 4, 2016, Idaho Administrative Bulletin, [Vol. 16-5, page 48](#).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Karen Vasterling at (208) 239-6263.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 5th Day of August, 2016.

Tamara Prisock, DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036

Phone: (208) 334-5500
Fax: (208) 334-6558
E-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0319-1601
(Only Those Sections With Amendments Are Shown.)

001. TITLE, SCOPE, AND EXCEPTIONS.

- 01. Title.** These rules are cited as IDAPA 16.03.19, “Rules Governing Certified Family Homes.” (4-11-06)
- 02. Scope.** These rules set the minimum standards and administrative requirements for any home that is paid to care for an adult living in the home, when the adult is elderly or has a developmental disability, mental illness, or physical disability, and needs assistance with activities of daily living. (4-11-06)
- 03. Exceptions to These Rules.** These rules do not apply to the following: (4-11-06)
- a.** Any home that provides only housing, meals, transportation, housekeeping or recreational and social activities. (4-11-06)
- b.** Any health facility defined by Title 39, Chapter 13, Idaho Code. (4-11-06)
- c.** Any residential care or assisted living facility defined by Title 39, Chapter 33, Idaho Code. (4-11-06)
- d.** Any arrangement for care in a relative’s home that is not compensated through a federal or state program. (4-11-06)
- e.** Any home approved by the Department of Veterans Affairs as a “medical foster home” described in 38 CFR Part 17 and Sections 39-3502 and 39-3512, Idaho Code. Homes that provide care to both veterans and non-veterans are not exempt from these rules. ()
- 04. State Certification to Supersede Local Regulation.** These rules will supersede any program of any political subdivision of the state which certifies or sets standards for certified family homes. These rules do not supersede any other local regulations. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

200. RESIDENT RIGHTS POLICY.

Each certified family home will develop and implement a written resident rights policy which will protect and promote the rights of each resident. The written description of legal rights must include a description of the protection of personal funds and a statement that a resident may file a complaint with the Department at the address in Section 005 of these rules, or local Regional Office regarding resident abuse and neglect and misappropriation of resident property in the home. Resident rights include the following: (4-11-06)

- 01. Privacy.** Each resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written and telephone communications, visits and meetings of family and resident groups, including: (4-11-06)
- a.** The right to send and receive mail unopened; (4-11-06)
- b.** If the resident is married, privacy for visits by his spouse. If both are residents in the home, they are permitted to share a room unless medically inadvisable, as documented by the attending physician. (4-11-06)
- 02. Humane Care.** Each resident has the right to humane care and a humane environment, including the following: (4-11-06)

- a. The right to a diet which is consistent with any religious or health-related restrictions; (4-11-06)
- b. The right to refuse a restricted diet; and (4-11-06)
- c. The right to a safe and sanitary living environment. (4-11-06)
- 03. Respectful Treatment.** Each resident has the right to be treated with dignity and respect, including: (4-11-06)
 - a. The right to be treated in a courteous manner by the provider; (4-11-06)
 - b. The right to receive a response from the home to any request of the resident within a reasonable time; (4-11-06)
 - c. Freedom from discrimination; and (4-11-06)
 - d. Freedom from intimidation, manipulation, coercion, and exploitation. (4-11-06)
 - e. The right to wear his own clothing. (4-11-06)
 - f. The right to determine his own dress and hair style; (4-11-06)
- 04. Basic Needs Allowance.** Residents whose care is paid for by public assistance must retain, for their personal use, the difference between their total income and the Certified Family Home basic allowance established by IDAPA 16.03.05. "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled," Section 513. (4-11-06)
- 05. Resident Funds.** Residents have the right to manage their personal funds. A home must not require a resident to deposit his personal funds with the home. (4-11-06)
- 06. Access to Resident.** Each home must permit immediate access to any resident by any representative of the Department, by the state Ombudsman for the elderly or his designees, by an adult protection investigator or by the resident's personal physician. Each home must also permit the following: (4-11-06)
 - a. Immediate access to a resident by immediate family or other relatives, subject to the resident's right to deny or withdraw consent at any time; (4-11-06)
 - b. Immediate access to a resident by others who are visiting with the consent of the resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time; (4-11-06)
 - c. Reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time. (4-11-06)
- 07. Freedom From Harm.** The resident has the right to be free from physical, mental, or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline. (4-11-06)
 - a. A certified family provider who has reasonable cause to believe that a vulnerable adult is being or has been abused, neglected, or exploited must immediately report this information to the Idaho Commission on Aging or its Area Agencies on Aging, according to Section 39-5303, Idaho Code. (4-11-06)
 - b. The home must report within four (4) hours to the appropriate law enforcement agency when there is reasonable cause to believe that abuse, neglect, misappropriation of resident's property, or sexual assault has resulted in death or serious physical injury jeopardizing the life, health, or safety of a vulnerable adult resident according to Sections 39-5303 and 39-5310, Idaho Code. (4-11-06)
- 08. Health Services.** The resident has the right to control his health-related services, including:

- (4-11-06)
- a. The right to retain the services of his own personal physician and dentist; (4-11-06)
 - b. The right to select the pharmacy or pharmacist of his choice; (4-11-06)
 - c. The right to confidentiality and privacy concerning his medical or dental condition and treatment; (4-11-06)
 - d. The right to participate in the formulation of his plan of service. (4-11-06)
- 09. Grievance.** The resident has the right to voice or file a grievance with respect to care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievance and the right to prompt efforts by the home to resolve grievances the resident may have, including those with respect to the behavior of other residents. (4-11-06)
- 10. Advance Notice.** The resident must receive written advance notice at least ~~fifteen (15)~~ thirty (30) calendar days prior to his non-emergency transfer or discharge unless he is transferred or discharged only for medical reasons, or for his welfare or the welfare of other residents, or for nonpayment for his stay. ~~The written advance notice can be up to thirty (30) days if agreed to in the admission agreement.~~ (4-11-06)()
- 11. Other Rights.** In addition to the rights outlined in Subsections 200.01 through 200.10 of these rules, the resident has the following rights: (4-11-06)
- a. The resident has the right to refuse to perform services for the home; (4-11-06)
 - b. The resident must have access to his personal records and must have the right to confidentiality of personal and clinical records; (4-11-06)
 - c. The resident has the right to practice the religion of his choice or to abstain from religious practice. Residents must also be free from the imposition of the religious practices of others; (4-11-06)
 - d. The resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the home; (4-11-06)
 - e. The resident has the right to examine, upon reasonable request, the results of the most recent inspection of the home conducted by the Department with respect to the home and any plan of correction in effect with respect to the home; (4-11-06)
 - f. The resident has a right to review a list of other certified family homes that may be available to meet his needs in case of transfer; (4-11-06)
 - g. The resident has the right not to be required to receive routine care of a personal nature from a member of the opposite sex; (4-11-06)
 - h. The resident has the right to be informed, in writing, regarding the formulation of advance directives as described in Title 39, Chapter 45, Idaho Code; and (4-11-06)
 - i. The resident must have any other right established by law. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

260. ADMISSIONS.

- 01. Admission Agreement.** At the time of admission to a certified family home, the provider and the

resident must enter into an admission agreement. The agreement will be in writing and must be signed by both parties. The agreement must, in itself or by reference to the resident's plan of care, include at least the following: (4-11-06)

- a. Whether or not the resident will assume responsibility for his own medication including reporting missed medication or medication taken on a PRN basis; (4-11-06)
- b. Whether or not the resident has ongoing ability to safeguard himself against personal harm, injury or accident. The certified family home must have a plan in place for steps it will take if the resident is not able to carry out his own self-preservation. (4-11-06)
- c. Whether or not the provider will accept responsibility for the resident's funds; (4-11-06)
- d. How a partial month's refund will be managed; (4-11-06)
- e. Responsibility for valuables belonging to the resident and provision for the return of a resident's valuables should the resident leave the home; (4-11-06)
- f. Amount of liability coverage provided by the homeowner's or renter's insurance policy. (4-11-06)
- g. ~~Fifteen (15) calendar days'~~ Written notice ~~or up to~~ at least thirty (30) calendar days as agreed to in the admission agreement prior to transfer or discharge on the part of either party; ~~(4-11-06)~~ ()
- h. Conditions under which emergency transfers will be made; (4-11-06)
- i. Signed permission to transfer pertinent information from the resident's record to a hospital, nursing home, residential and assisted living facility, or other certified family home; (4-11-06)
- j. Responsibility to obtain consent for medical procedures including the name, address, phone of guardian or power of attorney for health care for any resident who is unable to make his own medical decisions. (4-11-06)
- k. Resident responsibilities as appropriate; (4-11-06)
- l. Amount the home will charge for room, utilities and three (3) daily meals; and (4-11-06)
- m. Other information as needed. (4-11-06)

02. Termination of Admission Agreement. The admission agreement must not be terminated except under the following conditions: (4-11-06)

- a. ~~By written notification by either party~~ Giving the other party ~~fifteen (15)~~ at least thirty (30) calendar days' written notice ~~or as agreed to in the Admission Agreement but not to exceed thirty (30) days for any reason;~~ ~~(4-11-06)~~ ()
- b. The resident's mental or physical condition deteriorates to a level requiring evaluation or services that cannot be provided in a certified family home; (4-11-06)
- c. Nonpayment of the resident's bill provided terminations under this subsection comply with Title 6, Chapter 3, Idaho Code; ~~(4-11-06)~~ ()
- d. Emergency conditions requiring a resident to transfer out of the home without ~~fifteen (15)~~ thirty (30) calendar days' written notice to protect the resident or other residents in the home from harm; and ~~(4-11-06)~~ ()
- e. Other written conditions as mutually established between the resident and the provider at the time of admission. (4-11-06)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.06 - CRIMINAL HISTORY AND BACKGROUND CHECKS

DOCKET NO. 16-0506-1602 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 39-9109, 66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

Wednesday September, 7, 2016 1:00 pm (Local)	Thursday September 8, 2016 1:00 pm (Local)	Monday September 12, 2016 1:00 pm (Local)
Region 1 - Coeur d'Alene 1120 Ironwood Dr., Con. Rm. 118 Coeur d'Alene, ID	Lewiston Community Center 1424 Main Street Lewiston, ID	Region 3 - DHW Offices 3402 Franklin Rd Caldwell, ID
Tuesday September, 13, 2016 1:00 pm (Local)	Wednesday September 14, 2016 1:00 pm (Local)	Monday September 19, 2016 1:00 pm (Local)
Region 4 - DHW Offices 1720 N. Westgate Dr. Boise, ID	Region 5 - DHW Offices 601 Pole Line Road Twin Falls, ID	Region 7 - DHW Offices 150 Shoup Avenue Idaho Falls, ID
Tuesday September 20, 2016 1:00 pm (Local)		
Region 6 - DHW Offices 1070 Hiline Pocatello, ID		

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Department is updating the Criminal History and Background Check (CHC) rules to better protect vulnerable adults and children. The Department is amending the list of disqualifying crimes for unconditional denials to include crimes that have been added to Idaho Code and crimes required for child protection by federal programs. The CHC rules need to align with the Idaho Child Care Program's (ICCP) grant and federal regulation requirements related to criminal history checks by September 2017. ICCP providers are required to have relevant records searched in other states where they have lived in the previous five years, as well as having the background checks renewed.

Because of the fee charged by other states to check protection registries, the cost of the background check for individuals working with children may increase because Idaho law requires that the fees cover the cost of the background check.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

Through the rule negotiation process, it was determined that instead of increasing the background check fee for all applicants, it would be better to only increase the fees for the background checks of the applicants that are required to have additional records searched in other states where an individual has resided in the previous five years. The cost will stay the same as it is currently for most providers, unless they choose to work with children. Those individuals fee will increase by the amount charged by other states to check each states registries.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

The expected cost of the implementation of this rule change is \$85,150.00 for computer system upgrade. This expense will be covered with the Department's existing SFY 2017 budget appropriation. Once the rule changes are implemented, there will be no further fiscal impact to the State General Fund or to dedicated funds. This rulemaking is intended to be cost-neutral because the applicant is responsible for the costs unless otherwise provided by Department rule, as stated §56-1004A(7), Idaho Code.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016, Idaho Administrative Bulletin, **Vol. 16-6, pages 41 & 42.**

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Fernando Castro, at (208) 332-7999.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 5th Day of August, 2016.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5500 phone / (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0506-1602 (FEE RULE)
(Only Those Sections With Amendments Are Shown.)**

000. LEGAL AUTHORITY.

The Idaho Legislature has authorized the Department of Health and Welfare to promulgate rules to conduct criminal history and background checks under Sections 56-202(b), 56-203(2), 56-204A, 56-1004A, 56-1007, 39-1105, 39-1107, 39-1111, 39-1210(10), 39-1211(4), 39-3520, 39-5604, 39-9109, 66-404(7), 15-5-308(4), 15-5-311(5), and 15-5-316(5), Idaho Code. Under 42 USC Section 9858f, the Department is required to check certain records for federal child care programs. (4-6-15)()

001. TITLE, SCOPE AND POLICY.

01. Title. The title of this chapter is IDAPA 16.05.06, “Criminal History and Background Checks.” (3-26-08)

02. Scope. These rules assist the Department in the protection of children and vulnerable adults by providing requirements to conduct criminal history and background checks of individuals licensed or certified by the Department, or who provide care or services to vulnerable adults or children. Individuals requiring a criminal history check are identified in Department rules. (3-26-08)

03. Policy. It is the Department’s policy to conduct fingerprint-based criminal history and background checks on individuals who have completed a criminal history application. The criminal history applicant is required to disclose any pertinent information ~~of~~ **regarding** crimes or ~~offenses~~ **findings** that would disqualify the individual from providing care or services to vulnerable populations. The Department **may** obtain information for these criminal history and background checks from the following sources: ~~(3-26-08)~~()

- a. Federal Bureau of Investigation; (3-26-08)
- b. National Crime Information Center; (3-26-08)
- c. Idaho State Police Bureau of Criminal Identification; (3-26-08)
- d. ~~Idaho~~ **Any state or federal** Child Protection Central Registry; ~~(3-26-08)~~()
- e. ~~Idaho~~ **Any state or federal** Adult Protection Registry; ~~(3-26-08)~~()
- f. **Any state or federal** Sexual Offender Registry; ~~(3-26-08)~~()
- g. Office of Inspector General List of Excluded Individuals and Entities; (3-26-08)
- h. Idaho Department of Transportation Driving Records; (3-26-08)
- i. Nurse Aide Registry; (3-26-08)
- j. Other states and jurisdiction~~s~~ records and findings. ~~(3-26-08)~~()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS AND ABBREVIATIONS.

For the purposes of this chapter of rules, the following terms apply: (7-1-12)

01. Agency. An administrative subdivision of government or an establishment engaged in doing business for another entity. This term is synonymous with the term employer. (7-1-12)

02. Application. An individual’s request for a criminal history and background check in which the individual discloses any convictions, pending charges, or child or adult protection findings, and authorizes the Department to obtain information from available databases and sources relating to the individual. (3-26-08)

03. Clearance. A clearance ~~issued~~ **is a document designated** by the Department ~~once the~~ **as the official result of a completed** criminal history and background check ~~is completed and~~ **with** no disqualifying crimes or relevant records ~~are~~ found. ~~(3-26-08)~~()

04. Conviction. An individual is considered to have been convicted of a criminal offense as defined in Subsections 010.03.a. through 010.03.d. of this rule: (3-26-08)

- a.** When a judgment of conviction, or an adjudication, has been entered against the individual by any federal, state, military, or local court; (3-26-08)
- b.** When there has been a finding of guilt against the individual by any federal, state, military, or local court; (3-26-08)
- c.** When a plea of guilty or nolo contendere by the individual has been accepted by any federal, state, military, or local court; (3-26-08)
- d.** When the individual has entered into or participated in first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld. This includes: (3-26-08)
- i.** When the individual has entered into participation in a drug court; or (3-26-08)
- ii.** When the individual has entered into participation in a mental health court. (3-26-08)
- 05. Criminal History and Background Check.** A criminal history and background check is a fingerprint-based check of an individual's criminal record and other relevant records. (3-4-11)
- 06. Criminal History Unit.** The Department's Unit responsible for processing fingerprint-based criminal history and background checks, conducting exemption reviews, and issuing clearances or denials according to these rules. (3-26-08)
- 07. Denial.** A denial is issued by the Department when an individual has a relevant record or disqualifying crime. There are two (2) types of denials: (3-26-08)
- a.** Conditional Denial. A denial of an applicant because of a relevant record found in Section 230 of these rules. (3-26-08)
- b.** Unconditional Denial. A denial of an applicant because of a conviction for a disqualifying crime or a relevant record found in Sections 200 and 210 of these rules. (3-4-11)
- 08. Department.** The Idaho Department of Health and Welfare or its designee. (3-26-08)
- 09. Disqualifying Crime.** A disqualifying crime is a designated crime listed in Section 210 of these rules that results in the unconditional denial of an applicant. (3-26-08)
- 10. Employer.** An entity that hires people to work in exchange for compensation. This term is synonymous with the term agency. (7-1-12)
- 11. Enhanced Clearance.** An enhanced clearance is a clearance issued by the Department that includes a search of protection registries in other states or jurisdictions in which an applicant has resided during the preceding five (5) years. See Section 126 of these rules. ()
- 1-2. Exemption Review.** A review by the Department at the request of the applicant when a conditional denial has been issued. (3-26-08)
- 1-3. Federal Bureau of Investigation (FBI).** The federal agency where fingerprint-based criminal history and background checks are processed. (3-26-08)
- 1-4. Good Cause.** Substantial reason, one that affords a legal excuse. (3-4-11)
- 1-5. Idaho State Police Bureau of Criminal Identification.** The state agency where fingerprint-based criminal history and background checks are processed. (3-26-08)
- 1-6. Relevant Record.** A relevant record is a record that is found in a search of criminal records or registries checked by the Department as provided in Section 56-1004A, Idaho Code. (7-1-12)

011. -- 049. (RESERVED)

050. FEES AND COSTS FOR CRIMINAL HISTORY AND BACKGROUND CHECKS.

The fee for a Department fingerprint-based criminal history and background check is up to seventy dollars (\$70) for an individual. The applicant is responsible for the cost of the criminal history and background check except where otherwise provided by Department rules. An applicant is responsible for any additional costs incurred by the Department paid to agencies or criminal jurisdictions in other states. The Department will collect the additional funds to cover its costs. (3-27-13)()

(BREAK IN CONTINUITY OF SECTIONS)

061. EMPLOYER RESPONSIBILITIES.

The criminal history and background check clearance is not a determination of suitability for employment. The Department's criminal history and background check clearance means that an individual was found to have no disqualifying crime or relevant record. Employers are responsible for determining the individual's suitability for employment as described in Subsections 061.01 through 061.03 of these rules. (3-26-08)

01. Screen Applicants. The employer should screen applicants prior to initiating a criminal history and background check in determining the suitability of the applicant for employment. If an applicant discloses a disqualifying crime or offense, or discloses other information that would indicate a risk to the health and safety of children and vulnerable adults, a determination of suitability for employment should be made during the initial application screening. (3-26-08)

02. Maintain Printed Copy of Application. The employer must maintain a copy of the printed, signed, and notarized criminal history and background check application for all individuals required to obtain a criminal history and background check. This copy must be readily available for inspection to verify compliance with this requirement. An employer who chooses to use a criminal history and background check obtained for a previous employer must comply with Section 300 of these rules and maintain copies of the records. ()

023. Ensure Time Frames Are Met. The employer is responsible to ensure that the required time frames are met for completion and submission of the application and fingerprints to the Department as required in Section 150 of these rules. (3-26-08)

034. Employment Determination. The employer is responsible for reviewing the results of the criminal history and background check even if a clearance that resulted in no disqualifying crimes or offenses found is issued by the Department. The employer must then make a determination as to the ability or risk of the individual to provide care or services to children or vulnerable adults. (3-4-11)

(BREAK IN CONTINUITY OF SECTIONS)

120. APPLICATION FOR A CRIMINAL HISTORY AND BACKGROUND CHECK.

Individuals who are subject to a criminal history and background check must complete an application and have it notarized. The application must include disclosure of any disqualifying crimes, offenses, or relevant records. (3-26-08)

01. Application Form. The applicant must request a criminal history and background check by completing the Department's application form and submitting it on-line or by mail. The individual's application authorizes the Department to obtain information and release it as required in accordance with applicable state and federal law. The following information is required to complete the application: (3-26-08)

a. Name, current and former names, or aliases; (3-26-08)

- b. Current and former addresses as requested in the application; ~~(3-26-08)~~()
- c. Date of birth, that appears on a valid identification document issued by a governmental entity; (3-26-08)
- d. State and country of birth; and (3-26-08)
- e. Driver's license number, if licensed, state where licensed, and whether a license has ever been revoked or suspended. (3-26-08)
- f. Other identifying information, including gender, race, height, weight, eye color, and hair color; (3-26-08)
- g. Employer information; (3-26-08)
- h. Any criminal record or criminal offense information; (3-26-08)
- i. Any pending charges or outstanding warrants; (3-26-08)
- j. Any child or adult protection involvement; (3-26-08)
- k. Any Medicare or Medicaid Provider Exclusion; and (3-26-08)
- l. Any other information requested on the application. (3-26-08)

02. Disclosures. The individual must disclose any conviction, pending charges or indictment for crimes, and furnish a description of the crime and the particulars on the application. The individual must also disclose any notice by a state or local agency of substantiated child or substantiated vulnerable adult abuse, neglect, exploitation, or abandonment complaint, and any other information as required. (3-26-08)

03. Failure to Disclose Information. ()

a. An applicant who falsifies or fails to disclose information on the application, may be subject to a conditional denial under Section 230.01 and prosecution under Sections 18-3203, 18-5401, and 56-227A, Idaho Code. (3-26-08)

b. An applicant required to obtain a criminal history and background check under Section 126 of these rules that makes a materially false statement in connection to his background check will receive an unconditional denial as provided in Section 200 of these rules. ()

121. -- 124. (RESERVED)

125. IDAHO CHILD PROTECTION CENTRAL REGISTRY CHECKS.

~~Under the provisions in 42 USC 16961 Section 152, a check of the Idaho Child Protection Central Registry may be requested by another state for foster or adoptive placement cases~~ The Department will provide the results of a check of the Idaho Child Protection Central Registry to any agency that requires it to comply with the provisions of applicable federal or state law. The Department will process those requests as described in this rule. ~~(4-7-11)~~()

01. Request for an Idaho Child Protection Central Registry Check. A request for an Idaho Child Protection Central Registry check must be submitted by mail, facsimile transmission, or e-mail attachment on state or agency letterhead with the requesting authority contact information, and must include the following: ~~(4-7-11)~~()

- a. Name of the subject of the check, and any aliases; (4-7-11)
- b. Date of birth and Social Security Number of the subject of the check; and (4-7-11)
- c. A notarized signature of the subject of the check authorizing the request. (4-7-11)

02. **Fee Amount.** The fee for an Idaho Child Protection Central Registry check is twenty dollars (\$20) for each subject checked. (4-7-11)

03. **Department Response.** A response will be returned to the *state agency* initiating the request for the check within fourteen (14) days of receipt of the request. The Department's contact information will be included along with the result of the check. (4-7-11)()

126. APPLICANTS RECEIVING A DEPARTMENT ENHANCED CLEARANCE.

The following classes of individuals are required to provide their previous residence information for the preceding five (5) years in their application for a criminal history and background check. ()

01. **Adoptive Parent Applicants.** Described in Subsection 100.01 of these rules. ()

02. **Children's Residential Care Facilities.** Described in Subsection 100.05 of these rules. ()

03. **Children's Therapeutic Outdoor Programs.** Described in Subsection 100.06 of these rules. ()

04. **Emergency Medical Services (EMS).** Described in Subsection 100.11 of these rules. ()

05. **Idaho Child Care Program (ICCP).** Described in Subsection 100.16 of these rules. ()

06. **Licensed Foster Care.** Described in Subsection 100.18 of these rules. ()

07. **Licensed Day Care.** Described in Subsection 100.19 of these rules. ()

08. **Mental Health Services.** Described in Subsection 100.20 of these rules. ()

~~126~~7. -- 129. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

140. SUBMISSION OF FINGERPRINTS.

The Department's criminal history and background check is a fingerprint-based check. Ten (10) rolled fingerprints must be collected from the individual and submitted to the Department within the time frame for submitting applications as provided in Section 150 of these rules in order for a criminal history and background check request to be processed. The Department obtains fingerprints electronically at each of its fingerprint locations, or the Department's fingerprint card must be used. A Department fingerprint card can be obtained by contacting the Criminal History Unit, described in Section 005 of these rules. (7-1-14)

01. **Department Fingerprinting Locations.** A fingerprint appointment is scheduled at designated Department locations where the Department will collect the individual's fingerprints. Locations for the closest Department fingerprint collection office where an individual may submit fingerprints are listed on the Department's website, ~~or you~~. The applicant may contact the Criminal History Unit as described in Section 005 of these rules for additional guidance. (4-6-15)()

02. **Submitting Fingerprints by Mail.** When an individual elects to have fingerprints collected by a local law enforcement agency or by the applicant's employer, the Department's fingerprint card must be used. The fingerprint card must be completed in accordance with the instructions provided, signed, and mailed along with the completed notarized application and applicable fee to the address indicated on the Department's website. The notarized application and fees must be received by the Department in the time frame required in Section 150 of these rules. (7-1-14)

03. **Submission of Reprints.** In the event that an individual's submitted fingerprints are deemed

unreadable by the Department, Idaho State Police, or the FBI, the applicant must comply with a request for reprints from the Department within fifteen (15) calendar days from the date of the notice. Failure to comply with the Department's reprint request will result in the applicant being unavailable to provide services. (7-1-14)

(BREAK IN CONTINUITY OF SECTIONS)

180. CRIMINAL HISTORY AND BACKGROUND CHECK RESULTS.

The Department will issue a clearance or denial once the criminal history and background check is completed. ()

01. ~~Department Clearance~~ Results of Criminal History and Background Checks. The results may be accessed by the individual on the Department's website. The employer may access the information that is provided by the applicant and information obtained from the state, county, or through registries. When a relevant record identified in Subsection 200.01.b of these rules has been disclosed, but the applicant has no conviction of any crimes listed in Subsections 210.01 or 210.02 of these rules, a clearance will be issued. (3-20-14)()

02. Findings for Court Required Criminal History and Background Checks. As required in Section 56-1004A(2)(b), Idaho Code, the Department will provide findings of a court ordered criminal history and background check to individuals appointed by the court according to Title 15, Chapter 5, or Title 66, Chapter 4, Idaho Code. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

190. CRIMINAL HISTORY AND BACKGROUND CHECK CLEARANCE.

01. ~~Department~~ Clearance. A criminal history and background check clearance is issued by the Department once all relevant records and findings have been reviewed and the Department has cleared the applicant. The clearance will be published on the Department's website and the individual may print copies of the clearance. The employer must print the clearance within fourteen (14) calendar days of the clearance being accessible on the Department's website, and maintain a copy readily available for inspection. (4-6-15)()

02. Revocation of ~~Department~~ Clearance. An individual's previously issued clearance may be revoked for the following: (7-1-14)()

a. The individual fails to comply with the Department's request to submit to a new criminal history and background check according to Subsection 300.04 of these rules. (7-1-14)

b. The individual completes a new criminal history and background check and is found to have a criminal or relevant record that results in an inability to proceed action or in a denial as described in Sections 190 or 200 of these rules. (7-1-14)

c. The criminal history and background check fees are not paid, or are insufficient to cover the costs of the background check. ()

191. -- 199. (RESERVED)

200. UNCONDITIONAL DENIAL.

An individual who receives an unconditional denial is not available to provide services, have access, or to be licensed or certified by the Department. (3-26-08)

01. Reasons for an Unconditional Denial. Unconditional denials are issued for: (3-4-11)

a. Disqualifying crimes described in Section 210 of these rules; (3-4-11)

- b. A relevant record or finding on the Idaho any Child Abuse Central Protection Registry with a Level 1 or Level 2 finding; for the classes of individuals listed in Section 126 of these rules: ~~(7-1-12)~~()
- c. A relevant record on the Nurse Aide Registry; (7-1-14)
- d. A relevant record on either the state or federal sex offender registries; ~~or~~ ~~(7-1-14)~~()
- e. A relevant record on the state or federal Medicaid Exclusion List, described in Section 240 of these rules; or ~~(7-1-12)~~()
- f. A materially false statement made knowingly in connection to the Department's criminal history and background check application for the classes of individuals listed in Section 126 of these rules. ()

02. Issuance of an Unconditional Denial. The Department will issue an unconditional denial within fourteen (14) days of completion of a criminal history and background check. (3-26-08)

03. Challenge of Department's Unconditional Denial. An individual has twenty-eight (28) days from the date the unconditional denial is issued to challenge the Department's unconditional denial. The individual must submit the challenge in writing and provide court records or other information which demonstrates the Department's unconditional denial is incorrect. These documents must be filed with the Criminal History Unit described in Section 005 of these rules. (7-1-14)

a. If the individual challenges the Department's unconditional denial, the Department will review the court records, documents and other information filed by the individual. The Department will issue a decision within thirty (30) days of the receipt of the challenge. The Department's decision will be a final order under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

b. If the individual does not challenge the Department's unconditional denial within thirty (30) days, it becomes a final order of the Department under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 152. (3-26-08)

04. No Exemption Review. No exemption review, as described in Section 250 of these rules, is allowed for an unconditional denial. (3-26-08)

05. Appeal of an Unconditional Denial. Following a challenge of the Department's unconditional denial, an individual may appeal the Department's decision under the provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." The request to appeal an unconditional denial does not stay the action of the Department. (7-1-14)

201. -- 209. (RESERVED)

210. DISQUALIFYING CRIMES RESULTING IN AN UNCONDITIONAL DENIAL.

An individual is not available to provide direct care or services when the individual discloses or the criminal history and background check reveals a conviction for a disqualifying crime on his record as described in Subsections 210.01 and 210.02 of this rule. (3-26-08)

01. Disqualifying Crimes. The disqualifying crimes, described in Subsections 210.01.a. through 210.01.c. of this rule, or any substantially conforming foreign criminal violation, will result in an unconditional denial being issued. ~~(7-1-12)~~()

a. Crimes against vulnerable adults: ()

i. Abuse, neglect, or exploitation of a vulnerable adult, as defined in Section 18-1505, Idaho Code; (3-26-08)

ii. Abandoning a vulnerable adult, as defined in Section 18-1505A, Idaho Code; ()

- ~~iii.~~ Sexual abuse and exploitation of a vulnerable adult, as defined in Section 18-1505B, Idaho Code. ()
- ~~b.~~ Aggravated, first-degree and second-degree arson, as defined in Sections 18-801 through 18-803, and 18-805, Idaho Code; (3-26-08)
- ~~c.~~ Crimes against nature, as defined in Section 18-6605, Idaho Code; (3-26-08)
- ~~d.~~ Forcible sexual penetration by use of a foreign object, as defined in Section 18-6608, Idaho Code; (3-26-08)
- ~~e.~~ Hiring, employing, or using a minor to engage in certain acts, as defined in Section 18-1517A, Idaho Code; ()
- ~~f.~~ Human trafficking, as defined in Sections 18-8602 and 18-8603, Idaho Code; ()
- ~~eg.~~ Incest, as defined in Section 18-6602, Idaho Code; (3-26-08)
- ~~fh.~~ Injury to a child, felony or misdemeanor, as defined in Section 18-1501, Idaho Code; (3-26-08)
- ~~gi.~~ Kidnapping, as defined in Sections 18-4501 through 18-4503, Idaho Code; (3-26-08)
- ~~hj.~~ Lewd conduct with a minor, as defined in Section 18-1508, Idaho Code; (3-26-08)
- ~~ik.~~ Mayhem, as defined in Section 18-5001, Idaho Code; (3-26-08)
- ~~jl.~~ Manslaughter: (7-1-12)

 - i. Voluntary manslaughter, as defined in Section 18-4006(1) Idaho Code; (7-1-12)
 - ii. Involuntary manslaughter, as defined in Section 18-4006(2), Idaho Code; (7-1-12)
 - iii. Felony vehicular manslaughter, as defined in Section 18-4006(3)(a) and (b), Idaho Code; (7-1-12)
- ~~km.~~ Murder in any degree or assault with intent to commit murder, as defined in Sections 18-4001, 18-4003, and 18-4015, Idaho Code; (7-1-12)
- ~~ln.~~ Poisoning, as defined in Sections 18-4014 and 18-5501, Idaho Code; (3-26-08)
- ~~mn.~~ Possession of sexually exploitative material, as defined in Section 18-1507A, Idaho Code; (~~3-26-08~~)
- ~~no.~~ Rape, as defined in Section 18-6101, Idaho Code; (3-26-08)
- ~~op.~~ Robbery, as defined in Section 18-6501, Idaho Code; (3-26-08)
- ~~pq.~~ Felony stalking, as defined in Section 18-7905, Idaho Code; (3-26-08)
- ~~qr.~~ Sale or barter of a child, as defined in Section 18-1511, Idaho Code; (3-26-08)
- ~~s.~~ Ritualized abuse of a child, as defined in Section 18-1506A, Idaho Code; ()
- ~~tr.~~ Sexual abuse or exploitation of a child, as defined in Sections 18-1506 ~~and 18-1507~~, Idaho Code; (~~3-26-08~~) ()
- ~~u.~~ Felony sexual exploitation of a child, as defined in Section 18-1507, Idaho Code; ()

v. Sexual battery of a minor child under sixteen (16) or seventeen (17) years of age, as defined in Section 18-1508A, Idaho Code; ()

~~sw.~~ Video voyeurism, as defined in Section 18-6609, Idaho Code; (3-26-08)

~~fx.~~ Enticing of children, as defined in Sections 18-1509 and 18-1509A, Idaho Code; (3-26-08)

~~ny.~~ Inducing individuals under eighteen (18) years of age into prostitution or patronizing a prostitute, as defined in Sections 18-5609 and 18-5611, Idaho Code; (3-26-08)

~~yz.~~ Any felony punishable by death or life imprisonment; ~~or~~ (~~3-26-08~~)()

aa. Attempted strangulation, as defined in Section 18-923, Idaho Code; ()

bb. Felony domestic violence, as defined in Section 18-918, Idaho; or ()

~~cc.~~ Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying designated crimes. (3-29-10)

02. Disqualifying Five-Year Crimes. The Department will issue an unconditional denial for an individual who has been convicted of the following described crimes for five (5) years from the date of the conviction for the crimes listed in Subsections 210.02.a. through 210.02.j. of this rule, or any substantially conforming foreign criminal violation: (~~7-1-14~~)()

a. Any felony not described in Subsection 210.01, of this rule; (3-4-11)

b. Misdemeanor domestic violence, as defined in Section 18-918, Idaho Code; ()

c. Failure to report abuse, abandonment or neglect of a child, as defined in Section 16-1605, Idaho Code; ()

~~bd.~~ Misdemeanor forgery of and fraudulent use of a financial transaction card, as defined in Sections 18-3123 through 18-3128, Idaho Code; (3-4-11)

~~ee.~~ Misdemeanor forgery and counterfeiting, as defined in Sections 18-3601 through 18-3620, Idaho Code; (3-4-11)

~~ff.~~ Misdemeanor identity theft, as defined in Section 18-3126, Idaho Code; (3-4-11)

~~eg.~~ Misdemeanor insurance fraud, as defined in Sections 41-293 and 41-294, Idaho Code; (3-4-11)

~~fh.~~ ~~Misdemeanor-p~~ Public assistance fraud, as defined in Sections 56-227 ~~and~~, 56-227A, 56-227D, 56-227E and 56-227F, Idaho Code; (~~7-1-12~~)()

i. Sexual exploitation of a child by electronic means, felony or misdemeanor, as defined in Section 18-1507A, Idaho Code; ()

~~gj.~~ Stalking in the second degree, as defined in Section 18-7906, Idaho Code; (7-1-12)

~~hk.~~ Misdemeanor vehicular manslaughter, as defined in Section 18-4006(3)(c), Idaho Code; (7-1-14)

~~il.~~ Sexual exploitation by a medical care provider, as defined in Section 18-919, Idaho Code; ~~or~~ (~~7-1-14~~)()

m. Operating a certified family home without certification, as defined in Section 39-3528, Idaho Code; ()
or ()

f. Attempt, conspiracy, accessory after the fact, or aiding and abetting, as defined in Sections 18-205, 18-306, 18-1701, and 19-1430, Idaho Code, to commit any of the disqualifying five (5) year crimes. (3-29-10)

03. Underlying Facts and Circumstances. The Department may consider the underlying facts and circumstances of felony or misdemeanor conduct including a guilty plea or admission in determining whether or not to issue a clearance, regardless of whether or not the individual received one (1) of the following: (3-26-08)

- a.** A withheld judgment; (3-26-08)
- b.** A dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required; (3-26-08)
- c.** An order according to Section 19-2604, Idaho Code, or other equivalent state law; or (3-26-08)
- d.** A sealed record. (3-26-08)

(BREAK IN CONTINUITY OF SECTIONS)

300. UPDATING CRIMINAL HISTORY AND BACKGROUND CHECKS.

The employer is responsible for confirming that the applicant has completed a criminal history and background check as provided in Section 190 of these rules. Once a clearance is issued by the Department, verifiable continuous employment of the applicant with the same employer eliminates the requirement for a new background check. The provisions stipulated on Subsections 300.03 and 300.04 of this rule still apply. (7-1-12)

01. New Criminal History and Background Check. Any individual required to have a criminal history and background check under these rules must complete a new application, including fingerprints when: (3-26-08)

- a.** Accepting employment with a new employer; or (3-26-08)
- b.** Applying for licensure or certification with the Department; and (3-26-08)
- c.** His last Department criminal history and background check was completed more than three (3) years prior to his employment date or licensure application date. (3-26-08)

02. Use of Criminal History Check Within Three Years of Completion. Any employer may use a Department criminal history and background check clearance obtained under these rules if: (3-26-08)

- a.** The individual has received a Department's criminal history and background check clearance within three (3) years from the date of employment; (4-6-15)
- b.** Prior to allowing the individual to provide services, the employer must obtain access to the individual's background check results and clearance through the Department's website by having the employer's identification number added to the individual's background check results, and (4-6-15)
- c.** The employer completes a state-only background check of the individual through the Idaho State Police Bureau of Criminal Identification, and no disqualifying crimes are found. (3-26-08)
 - i.** The action must be initiated by the employer within thirty (30) calendar days of obtaining access to the individual's criminal history and background check clearance issued by the Department; and (7-1-12)
 - ii.** The employer must be able to provide proof of this action by maintaining a copy of the records required in Subsections 300.02.a. and 300.02.c. of this rule. (4-6-15)

03. Employer Discretion. ~~The new~~ Any agency or employer, at its discretion, may require an individual to complete a Department criminal history and background check at any time, even if the individual has received a criminal history and background check clearance within three (3) years. ~~(3-26-08)~~ ()

04. Department Discretion. The Department may, at its discretion or as provided in program rules, require a criminal history and background check of any individual covered under these rules at any time during the individual's employment, internship, or while volunteering. Any individual required to complete a criminal history and background check under Sections 100 and 101 of these rules, must be fingerprinted within fourteen (14) days from the date of notification by the Department that a new criminal history and background check is required. (3-26-08)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.01 - CHILD AND FAMILY SERVICES

DOCKET NO. 16-0601-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections: 16-1629, 16-2102, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-204A, 56-803, 56-1003, 56-1004, 56-1004A, and 56-1007, Idaho Code; 42 USC 675 as amended by Public Law 113-183; and Sections 16-1621 and 16-1622, Idaho Code, amended under Senate Bill 1328 (2016).

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Wednesday, September 21, 2016 - 3:00 pm (MDT)

**Len B. Jordan Building
650 W. State Street
Basement Conference Room B-35
Boise, ID**

Via Teleconference Call-In

**Toll Free: 1-877-820-7831
Participant Code: 174419**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

These rule changes lower the age at which foster youth may begin receiving independent living services funded by the John H. Chafee Foster Care Independence Program. These services help foster youth develop life skills and prepare them for their transition out of foster care. These rule changes will give them earlier access to independent living services and thereby increase their access to life skills training and better prepare them for successful and productive adulthood. Recent changes in federal law (42 U.S.C. 675 as amended by Public Law 113-183) and also subsequent changes to Idaho state law by the 2016 legislature (Sections 16-1621 and 16-1622, Idaho Code) have enabled the Department to make these changes in rule and practice.

Specifically, these proposed rule changes lower the age at which foster youth are eligible to receive independent living services funded by the Chafee Program from 90 days after their 15th birthday to 90 days after their 14th birthday.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

This rulemaking has no fiscal impact to the state general fund or any other funds as all funding related to these rule changes is federal. The John H. Chafee Foster Care Independence Program funds are capped and Idaho receives the minimum, \$500,000, each year. This rule will simply make these funds available to a larger population of foster youth.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was deemed not feasible as these rule changes simply serve to bring independent living services to foster youth at an earlier age and align the rules with recent changes to enabling legislation in state and federal law.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michelle Weir at (208) 334-5651.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 5th Day of August, 2016.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5500 phone / (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0601-1601
(Only Those Sections With Amendments Are Shown.)

011. DEFINITIONS AND ABBREVIATIONS F THROUGH K.

For the purposes of these rules, the following terms are used: (5-8-09)

01. Family. Parent(s), legal guardian(s), related individuals including birth or adoptive immediate family members, extended family members and significant other individuals, who are included in the family plan. (5-3-03)

02. Family Assessment. An ongoing process based on information gained through a series of meetings with a family to gain mutual perception of strengths and resources that can support them in creating long-term solutions related to identified service needs and safety threats to family integrity, unity, or the ability to care for their members. (3-30-07)

03. Family Case Record. Electronic and hard copy compilation of all documentation relating to a family, including legal documents, identifying information, and evaluations. (5-8-09)

04. Family (Case) Plan. Also referred to as a family service plan. A written document that serves as the guide for provision of services. The plan, developed with the family, clearly identifies who does what, when, how, and why. The family plan incorporates any special plans made for individual family members. If the family includes an Indian child, or child's tribe, tribal elders or leaders should be consulted early in the plan development. (3-30-07)

05. Family Services Worker. Any of the direct service personnel, including social workers, working in regional Child and Family Services Programs. (5-8-09)

06. Federally-Funded Guardianship Assistance for Relatives. Benefits described in Subsection 702.04 and Section 703 of these rules provided to a relative guardian for the support of a child who is fourteen (14)

years of age or older, who, without guardianship assistance, would remain in the legal custody of the Department of Health and Welfare. (4-7-11)

- 07. Field Office.** A Department of Health and Welfare service delivery site. (3-18-99)
- 08. Goal.** A statement of the long term outcome or plan for the child and family. (3-18-99)
- 09. Independent Living.** Services provided to eligible foster or former foster youth, ages ~~fifteen (15)~~ ~~fourteen (14)~~ (14) to twenty-one (21), designed to support a successful transition to adulthood. (3-30-01)()
- 10. Indian.** Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C. 1606. (3-18-99)
- 11. Indian Child.** Any unmarried person who is under the age of eighteen (18) who is: (3-18-99)
- a.** A member of an Indian tribe; or (3-29-12)
- b.** Eligible for membership in an Indian tribe, and who is the biological child of a member of an Indian tribe. (3-29-12)
- 12. Indian Child Welfare Act (ICWA).** The Indian Child Welfare Act, 25 U.S.C. 1901, et seq. (3-18-99)
- 13. Indian Child's Tribe.** (3-18-99)
- a.** The Indian tribe in which an Indian child is a member or eligible for membership, or (3-18-99)
- b.** In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant contacts. (3-18-99)
- 14. Indian Tribe.** Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c). (3-18-99)
- 15. Intercountry Adoption Act of 2000 (P.L. 106-279).** Federal law designed to protect the rights of, and prevent abuses against children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and to insure that such adoptions are in the children's best interests; and to improve the ability of the federal government to assist U.S. citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. (5-3-03)
- 16. Interethnic Adoption Provisions of 1996 (IEP).** IEP prohibits delaying or denying the placement of a child for adoption or foster care on the basis of race, color or national origin of the adoptive or foster parent(s), or the child involved. (4-7-11)
- 17. Interstate Compact on the Placement of Children (ICPC).** Interstate Compact on the Placement of Children (ICPC) in Title 16, Chapter 21, Idaho Code, ensures that the jurisdictional, administrative, and human rights obligations of interstate placement or transfers of children are protected. (3-20-04)
- 18. Kin.** Non-relatives who have a significant, family-like relationship with a child. Kin may include godparents, close family friends, clergy, teachers, and members of a child's Indian tribe. Also known as fictive kin. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

030. CORE CHILD AND FAMILY SERVICES.

The following core services are the state and federally mandated services provided by or through regional Child and Family Services offices: (5-8-09)

01. Crisis Services. Crisis Services are an immediate response to ensure safety when a child is believed to be in imminent danger as a result of child abuse, neglect, or abandonment. Crisis services require immediate access to services, twenty-four (24) hours per day, seven (7) days per week to assess safety and place in alternate care, if necessary, to ensure safety for the child. (4-7-11)

02. Screening Services. Initial contact with families and children to gather information to determine whether or not the child meets eligibility criteria to receive child protection or adoption services. When eligibility criteria is not met for Department mandated services, appropriate community referrals are made. (5-8-09)

03. Assessment and Safety/Service Planning Services. Process in which the safety threats to the child, and the family's concerns, strengths, and resources are identified. Based on this assessment, a written plan is developed by the worker, together with the family and other interested parties. Each plan must have a long-term goal that identifies behaviorally-specific and measurable desired results and has specific tasks that identify who, how, and when the tasks will be completed. (4-7-11)

04. Preventative Services. Community-based services which support children and families and are designed to reduce the risk of child abuse, neglect, or abandonment. These services can involve direct services, but are primarily implemented through community education, and partnerships with other community agencies such as schools and courts. (5-8-09)

05. Court-Ordered Services. These services primarily involve court-ordered investigations or assessments of situations where children are believed to be at risk due to child abuse, neglect, or abandonment. (5-8-09)

06. Alternate Care (Placement) Services. Temporary living arrangements outside of the family home for children and youth who are victims of child abuse, neglect, or abandonment. These out-of-home placements are arranged for and financed, in full or in part, by the Department. Alternate care is initiated through either a court order or voluntarily through an out-of-home placement agreement. Payment will be made on behalf of a child placed in the licensed home of an individual or relative, a public or private child care institution, a home licensed or approved by an Indian child's tribe, or in a state-licensed public child care institution accommodating no more than twenty-five (25) children. Payments may be made to individuals or to a public or private child placement or child care agency. (3-29-12)

07. Community Support Services. Services provided to a child and family in a community-based setting which are designed to increase the strengths and abilities of the child and family and to preserve the family whenever possible. Services include respite care and family preservation. (5-8-09)

08. Interstate Compact on Out-of-State Placements. Where necessary to encourage all possible positive contacts with family, including extended family, placement with family members or others who are outside the state of Idaho will be considered. On very rare occasion the Department may contract with a residential facility out of state if it best serves the needs of the child and is at a comparable cost to facilities within Idaho. When out-of-state placement is considered in the permanency planning for a child, such placement will be coordinated with the respective interstate compact administrator according to the provisions of Section 16-2101, et seq., Idaho Code, the "Interstate Compact on the Placement of Children." Placements must be in compliance with all state and federal laws. (5-8-09)

09. Independent Living. Services, including assessment and planning, provided to eligible youth to promote self-reliance and successful transition to adulthood. (5-8-09)

a. Eligibility Requirements for Current Foster Youth. To be eligible for independent living services, a current foster youth must: (5-8-09)

i. Be ~~fifteen (15)~~ fourteen (14) to nineteen (19) years of age; ~~(5-8-09)~~ ()

ii. Currently be under Department or tribal care and placement authority established by a court order or voluntary agreement with the youth's family, or be under a voluntary agreement for continued care if the youth is between eighteen (18) and nineteen (19) years of age; and (5-8-09)

iii. Have been in foster care or similar eligible setting for a minimum of ninety (90) total days. (5-8-09)

b. Eligibility Requirements for Former Foster Youth. To be eligible for independent living services, a former foster youth must: (5-8-09)

i. Be a former foster youth who is currently under twenty-one (21) years of age; and (5-8-09)

ii. Have been under Department or tribal care and placement authority established by a court order or voluntary agreement with the youth's family, or under a voluntary agreement for continued care after the youth has reached eighteen (18) years of age; and (5-8-09)

iii. Have been placed in foster care or similar eligible setting for a minimum of ninety (90) days total after reaching ~~fifteen (15)~~ **fourteen (14)** years of age; or ~~(5-8-09)~~ ()

iv. Be eighteen (18) to twenty-one (21) years of age, provide verification of meeting the Independent Living eligibility criteria in another state, and currently be a resident of Idaho. (5-8-09)

c. Eligibility Limit. Once established, a youth's eligibility is maintained up to his twenty-first birthday, regardless of whether he continues to be the responsibility of the Department, tribe, or be in foster care. (5-8-09)

10. Adoption Services. Department services designed to promote and support the permanency of children with special needs through adoption. This involves the legal and permanent transfer of all parental rights and responsibilities to the family assessed as the most suitable to meet the needs of the individual child. Adoption services also seeks to build the community's capacity to deliver adoptive services. (3-30-01)

11. Administrative Services. Regulatory activities and services which assist the Department in meeting the goals of safety, permanency, health and well-being for children and families. These services include: (5-8-09)

a. Child care licensing; (3-30-01)

b. Daycare licensing; (3-30-01)

c. Community development; and (5-8-09)

d. Contract development and monitoring. (5-8-09)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)
DOCKET NO. 16-0612-1601
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2016.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202, Idaho Code, and CFR 45 Part 98.42, for the Reauthorization of the Child Care and Development Block Grants.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Thursday, September 15, 2016 - 12:00 to 2:00 pm (MDT)

**Central Idaho DHW Office
450 W. State Street
2nd Floor Conference Room 2-A
Boise, ID**

Via Teleconference Call-In

**Toll Free: 1-877-820-7831
Participant Code: 645464#**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Department administers the Idaho Child Care Program through grants and other funding sources. Congress passed the Reauthorization of the Child Care and Development Block Grant Act which requires the state to comply by October 1, 2016. The changes in this chapter of rules implement a 12-month redetermination, job search availability, additional criminal history requirements, health and safety requirements for child care providers, and includes a gradual phase out for those individuals receiving ICCP services whose incomes exceed the limits of the program.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These rules need to be in effect to meet federal law governing ICCP and to protect the public health, safety, or welfare of children in Idaho receiving these services. The US Congress passed the Reauthorization of the Child Care and Development Block Grant in 2014 with states required to comply by October 1, 2016.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

The fiscal impact for SFY 2017 was appropriated by the 2016 Legislature under Line items 9 and 13 in HB 0574. The amount of the grant and federal funds include one-time funding to migrate and modernize the Child Care

Program's automation system and to increase the subsidy for child care support and increased caseload funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016, Idaho Administrative Bulletin, [Vol 16-6, pages 43-44](#).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Ericka Rupp at (208) 334-5815.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 5th Day of August, 2016.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
(208) 334-5500 phone / (208) 334-6558 fax
dhwrules@dhw.idaho.gov e-mail

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 16-0612-1601
(Only Those Sections With Amendments Are Shown.)**

003. ADMINISTRATIVE APPEALS.

01. Administrative Appeals. All administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Cases Proceedings and Declaratory Rulings." (4-2-08)

02. Complaint Procedure. The Department will maintain a record of substantiated *child protection* complaints against child care providers. Information regarding such substantiated *child protection* complaints is available in accordance with the Section 006 of these rules. (~~4-2-08~~)(10-1-16)T

(BREAK IN CONTINUITY OF SECTIONS)

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Compliance with Department Criminal History and Background Check. Criminal history and background checks are required for ICCP providers. Providers who are required to have a criminal history check must comply with IDAPA 16.05.06, "Criminal History and Background Checks." (4-9-09)

02. ICCP Provider is Approved. The ICCP provider must have completed a criminal history and background check, and received a clearance, prior to becoming an ICCP provider. (4-9-09)

03. Availability to Work or Provide Service. (4-9-09)

a. The employer or provider, at its discretion, may allow an individual to provide care or services on a provisional basis once the application for a criminal history and background check is completed and notarized, and the employer has reviewed the application for any disqualifying crimes or relevant records. The employer determines whether the individual could pose a health and safety risk to the vulnerable participants it serves. The individual is not allowed to provide care or services when the employer determines the individual has disclosed a disqualifying crime or relevant records. (4-9-09)

b. Those individuals licensed or certified by the Department are not available to provide services or receive licensure or certification until the criminal history and background check is completed and a clearance issued by the Department. (4-9-09)

c. Individuals living in the home who have direct contact with children are allowed contact after the criminal history application and self-disclosure is completed as provided in Section 56-1004A, Idaho Code, except when they have disclosed a disqualifying crime listed in IDAPA 16.05.06, "Criminal History and Background Checks." (4-9-09)

04. Applicants, Providers, and Other Individuals Subject to Criminal History Check Requirements. The following applicants, providers, and other individuals listed below must submit evidence to the Department that the following individuals have successfully completed and received a Department criminal history and background check clearance: (4-9-09)(10-1-16)T

a. ~~All child care centers employees and volunteers~~ group, family, relative, and in-home providers including owners, operators, and staff, who have direct contact with children; (4-9-09)(10-1-16)T

b. ~~Group child care employees and volunteers~~ All individuals thirteen (13) years of age or older who have direct contact with children; (4-9-09)(10-1-16)T

c. ~~Family child care provider and any~~ All individuals age thirteen (13) years of age or older living in the home who ~~have direct contact with children~~ are regularly on the premises; (4-9-09)(10-1-16)T

d. ~~Relative child care provider and any individual age thirteen (13) or older living in the home who have direct contact with children; and~~ (4-9-09)

e. ~~In-home child care provider.~~ (4-9-09)

05. Renewal of Criminal History and Background Check Requirement. Applicants, providers, employees, volunteers, and individuals thirteen (13) years of age or older who have direct contact with or provide care to children eligible for ICCP benefits must comply with these requirements and receive a clearance as provided in IDAPA 16.05.06, "Criminal History and Background Checks," every five (5) years. (10-1-16)T

~~056.~~ **Criminal History and Background Check at Any Time.** The Department can require a criminal history and background check at any time on any individual providing child care to an ICCP eligible child. (4-9-09)

~~067.~~ **Additional Criminal Convictions.** Once an individual has received a criminal history clearance, any additional criminal convictions must be reported by the child care provider to the Department when the provider learns of the conviction. (4-9-09)

010. DEFINITIONS AND ABBREVIATIONS -- A THROUGH L. The following definitions and abbreviations apply to this chapter: (4-2-08)

01. AABD. Aid to the Aged, Blind, and Disabled. (4-2-08)

02. Abuse or Abusive. Provider practices that are inconsistent with sound fiscal, business, or child care practices and result in an unnecessary cost to the Idaho Child Care Program, in reimbursement that is not necessary, or that fail to meet professional recognized standards for child care, or result in physical harm, pain, or

- mental anguish to children. (7-1-09)
- 03. Child.** Any person under age eighteen (18) under the care of a parent, or a person eighteen (18) years of age or older who is claimed on tax returns as a dependent. (4-2-08)
- 04. Child Care.** Care, control, supervision, or maintenance of a child provided for compensation by an individual, other than a parent, for less than twenty-four (24) hours in a day. (4-2-08)
- 05. Claim.** Any request or demand for payment, or document submitted to initiate payment, for items or services provided under the Idaho Child Care Program. (7-1-09)
- 06. Department.** The Idaho Department of Health and Welfare or its designee. (7-1-09)
- 07. Earned Income.** Income received by a person as wages, tips, or self-employment income before deductions for taxes or any other purposes. (4-2-08)
- 08. Employment.** A job paying wages or salary at federal or state minimum wage, whichever is applicable, including work paid by commission or in-kind compensation. Full or part-time participation in a VISTA or AmeriCorps program is also employment. (4-2-08)
- 09. Foster Care.** The twenty-four (24) hour substitute care of children in the legal custody of the State of Idaho provided in a state licensed foster home by persons who may or may not be related to a child. Foster care is provided in lieu of parental care and is arranged through a private or public agency. ~~(4-1-13)~~(10-1-16)T
- 10. Foster Child.** A child in the legal custody of the State of Idaho placed for twenty-four (24) hour substitute care by a private or public agency. ~~(4-2-08)~~(10-1-16)T
- 11. Foster Home.** The private home of an individual or family licensed ~~by~~ under the ~~§~~State of Idaho and providing twenty-four (24) hour substitute care to six (6) or fewer children. ~~(4-1-13)~~(10-1-16)T
- 12. Fraud or Fraudulent.** An intentional deception or misrepresentation made by a person with knowledge that the deception could result in some unauthorized benefit to himself or some other person. (7-1-09)
- 13. Good Cause.** The conduct of a reasonably prudent person in the same or similar circumstances, unless otherwise defined in these rules. (7-1-99)
- 14. In Loco Parentis.** Acting “in loco parentis” means a person who acts in place of a parent, assuming care and custody of a child by a formal or informal agreement with the child’s parent. (4-2-08)
- 15. Intentional Program Violation (IPV).** An intentional false or misleading action, omission, or statement made in order to qualify as a provider or recipient in the Idaho Child Care program or to receive program benefits or reimbursement. (7-1-09)
- 16. Job Training and Education Program.** A program designed to provide job training or education. Programs may include high school, junior college, community college, college or university, general equivalency diploma (GED), technical school, and vocational programs. To qualify as a Job Training and Education Program, the program must prepare the trainee for employment. (4-2-08)
- 17. Infant/Toddler.** A child less than forty-eight (48) months of age. (10-1-16)T
- 18. Incapacitated Parent.** A parent who is determined by a licensed practitioner of the healing arts to be unfit, incapable, or significantly limited in his ability to provide adequate care for his child or ward. (10-1-16)T
- 1-9. Knowingly, Known, or With Knowledge.** With respect to information or an action about which a person has actual knowledge of the information or action; acts in deliberate ignorance of the truth or falsity of the information or the correctness or incorrectness of the action; or acts in reckless disregard of the truth or falsity of the information or the correctness or incorrectness of the action. (7-1-09)

~~18~~**20. Licensed Practitioner of the Healing Arts.** A licensed physician, physician assistant, nurse practitioner, or clinical nurse specialist. (4-2-08)

011. DEFINITIONS AND ABBREVIATIONS -- M THROUGH Z.
The following definitions and abbreviations apply to this chapter of rules: (4-2-08)

01. Managing Employee. A general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of an organization or entity. (7-1-09)

02. Minor Parent. A parent under the age of eighteen (18). (4-2-08)

03. Non-Recurring Lump Sum Income. Income received by a family in a single payment, not expected to be available to the family again. (7-1-99)

04. Parent. A person responsible for a child because of birth, adoption, step-parent, or guardianship; or a person acting in loco parentis. (4-2-08)

05. Preventive Services. Services needed to reduce or eliminate the need for protective intervention. Preventive services permit families to participate in activities designed to reduce or eliminate the need for out-of-home placement of a child by the Department. (4-2-08)

06. Prospective Income. Income a family expects to receive within a given time. This can be earned or unearned income. (7-1-99)

07. Provider. An individual, organization, agency, or other entity providing child care. (7-1-99)

08. Relative Provider. Grandparent, great-grandparent, aunt, uncle, or adult sibling by blood or current marriage who provides child care. (4-2-08)

09. SSI. Supplemental Security Income. (4-2-08)

10. Special Needs. Any child with physical, mental, emotional, behavioral disabilities, or developmental delays identified on an Individual Education Plan (IEP) or an Individualized Family Service Plan (IFSP). (4-2-08)

11. State Median Income (SMI). State Median Income Estimates in the Code of Federal Regulations are available on the U.S. Government Publishing Office website at <https://www.gpo.gov/fdsys>. (10-1-16)T

~~17~~**2. TAFI.** Temporary Assistance for Families in Idaho. (4-2-08)

~~12~~**3. Unearned Income.** Unearned income includes retirement, interest child support, and any income received from a source other than employment or self-employment. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

070. INCOME LIMITS.
~~A~~ **To be eligible for child care assistance,** a family's **countable** income must ~~be less than~~ **meet the following guidelines using** the published Federal Poverty Guidelines ~~for one hundred thirty percent (130%) of poverty for a family of the same size. The Federal Poverty Guidelines~~ (FPG) ~~are~~ available on the U.S. Health and Human Services website at <http://aspe.hhs.gov/poverty>. (~~4-4-13~~)(10-1-16)T

01. Income at Application. At the time of application, a family's income must not exceed one hundred thirty percent (130%) of the Federal Poverty Guidelines (FPG) for a family of the same size. (10-1-16)T

02. Income During Eligibility Period. During the eligibility period, when a family's countable income exceeds eighty-five percent (85%) of the State Median Income (SMI) for a family of the same size, the family becomes ineligible for child care assistance. (10-1-16)T

03. Income at Time of Redetermination. At the time of redetermination, if a family's income exceeds one hundred thirty percent (130%) of the Federal Poverty Guidelines (FPG) for a family of the same size, but does not exceed eighty-five percent (85%) of the State Median Income (SMI) for a family of the same size, the family may receive a graduated phase out of child care assistance. (10-1-16)T

(BREAK IN CONTINUITY OF SECTIONS)

072. EXCLUDED INCOME.

The following sources of income are not counted as family income. (4-2-08)

01. Earned Income of a Dependent Child. Income earned by a dependent child under age eighteen (18) is not counted, unless the child is a parent who is seeking or receiving child care benefits. (4-2-08)

02. Income Received for Person Not Residing With the Family. Income received on behalf of a person who is not living in the home. (4-2-08)

03. Educational Funds. All educational funds including grants, scholarships, an AmeriCorps Education Award, and federal and state work-study income. (4-2-08)

04. Assistance. Assistance to meet a specific need from other organizations and agencies. (4-2-08)

05. Lump Sum Income. Non-recurring or lump sum income is excluded as income if it is used to pay medical bills resulting from accident or injury, or used to pay funeral or burial costs. When lump sum income, minus exclusions, exceeds current income limits for a family of the same size, the family is not eligible to receive child care benefits. The period of ineligibility is computed by dividing the lump sum payment by the family's monthly income limit. In no case will the period of ineligibility exceed twelve (12) months. (4-2-08)

06. Loans. ~~A Loans with written, signed repayment agreements~~ is money received that is to be repaid. (4-2-08)(10-1-16)T

07. TAFI and AABD Benefits. (4-4-13)

08. Foster Care Payments. (4-4-13)

09. AmeriCorps/VISTA Volunteers. Living allowances, wages and stipends paid to AmeriCorps or VISTA volunteers under 42 U.C.S. 5044, P.L. 93-113, Title IV, Section 404(g) are excluded as income. (4-2-08)

10. Income Tax Refunds and Earned Income Tax Credits. Income tax refunds and earned income tax credits are excluded as income. (4-2-08)

11. Travel Reimbursements. Reimbursements from employers for work-related travel. (4-2-08)

12. Tribal Income. Income received from a tribe for any purpose other than direct wages. (4-2-08)

13. Foster Parents' Income. Income of licensed foster parents is excluded when determining eligibility for a foster child. Income is counted when determining eligibility for the foster parent's own child(ren). (4-2-08)

14. Adoption Assistance. Adoption assistance payments are excluded from income. (4-2-08)

~~15. **Child Support Payments.** Court-ordered child support payments made by the parent(s) who receive the child care benefits are deducted from income used to determine eligibility. Both the legal obligation to pay child support and the actual amount paid must be verified. (4-2-08)~~

165. Temporary Census Income. All wages paid by the Census Bureau for temporary employment related to U.S. Census activities are excluded for a time period not to exceed six (6) months during the regularly scheduled ten-year U.S. Census.

~~176. Office of Refugee Resettlement Assistance. (4-4-13)~~

~~187. Workforce Investment Act (WIA) Benefits or Workforce Innovation and Opportunity Act (WIOA) Benefits. (4-4-13)(10-1-16)T~~

073. INCOME DEDUCTIONS.

Court-ordered child support payments made by a parent who receives child care benefits are deducted from income when determining eligibility. The actual amount paid and the amount of the legal obligation for child support must be verified. (10-1-16)T

~~074. AVERAGING SELF-EMPLOYMENT INCOME.~~

01. Annual Self-Employment Income. When self-employment income is considered annual support by the household, the Department averages the self-employment income over a twelve (12) month period, even if: (5-8-09)

a. The income is received over a shorter period of time than twelve (12) months; and (5-8-09)

b. The household receives income from other sources in addition to self-employment. (5-8-09)

02. Seasonal Self-Employment Income. A seasonally self-employed individual receives income from self-employment during part of the year. When self-employment income is considered seasonal, the Department averages self-employment income for only the part of the year the income is intended to cover. (5-8-09)

~~075. CALCULATION OF SELF-EMPLOYMENT INCOME.~~

The Department calculates self-employment income by adding monthly income to capital gains and subtracting a deduction for expenses as determined in Subsection 0745.03 of this rule. ~~(5-1-11)(10-1-16)T~~

01. How Monthly Income is Determined. If no income fluctuations are expected, the average monthly income amount is projected for the certification period. If past income does not reflect expected future income, a proportionate adjustment is made to the expected monthly income. (5-8-09)

02. Capital Gains Income. Capital gains include profit from the sale or transfer of capital assets used in self-employment. The Department calculates capital gains using the federal income tax method. If the household expects to receive any capital gains income from self-employment assets during the certification period, this amount is added to the monthly income as determined in Subsection 0745.01 of this rule to determine the gross monthly income. ~~(5-1-11)(10-1-16)T~~

03. Self-Employment Expense Deduction. The Department uses the standard self-employment deduction in Subsection 0745.03.a. of this rule, unless the applicant claims that his actual allowable expenses exceed the standard deduction and provides proof of the expenses described in Subsection 0745.03.b. of this rule. ~~(5-1-11)(10-1-16)T~~

a. The self-employment standard deduction is determined by subtracting fifty percent (50%) of the gross monthly self-employment income as determined in Subsections 0745.01 and 0745.02 of this rule; or ~~(5-1-11)(10-1-16)T~~

b. The self-employment actual expense deduction is determined by subtracting the actual allowable expenses from the gross monthly self-employment income. The following items are not allowable expenses and may

- not be subtracted from the gross monthly self-employment income: (5-8-09)
- i. Net losses from previous tax years; (5-8-09)
 - ii. Federal, state, and local income taxes; (5-8-09)
 - iii. Money set aside for retirement; (5-8-09)
 - iv. Work-related personal expenses such as transportation to and from work; and (5-8-09)
 - v. Depreciation. (5-8-09)

0756. PROJECTING MONTHLY INCOME.

Income is projected for each month. Past income may be used to project future income. Changes expected during the certification period must be considered. Criteria for projecting monthly income is listed below: (5-1-11)

01. Income Already Received. Count income already received by the household during the month. If the actual amount of income from any pay period is known, use the actual pay period amounts to determine the total month's income. Convert the actual income to a monthly amount if a full month's income has been received or is expected to be received. If no changes are expected, use the known actual pay period amounts for the past thirty (30) days to project future income. (5-1-11)

02. Anticipated Income. Count income the household and the Department believe the household will get during the remainder of the certification period. If the income has not changed and no changes are anticipated, use the income received in the past thirty (30) days as one indicator of anticipated income. If changes in income have occurred or are anticipated, past income cannot be used as an indicator of anticipated income. If income changes and income received in the past thirty (30) days does not reflect anticipated income, the Department can use the household income received over a longer period to anticipate income. If income changes seasonally, the Department can use the household income from the last season, comparable to the certification period, to anticipate income. (5-1-11)

a. Full Month's Income. If income will be received for all regular pay dates in the month, it is considered a full month of income. (5-1-11)

b. If income will not be received for all regular pay dates in the month, it is not considered a full month of income and it is not converted. (5-1-11)

c. Income Paid on Salary. Income received on salary, rather than an hourly wage, is counted at the expected monthly salary rate. (5-1-11)

d. Income Paid at Hourly Rate. Compute anticipated income paid on an hourly basis by multiplying the hourly pay by the expected number of hours the client will work in the pay period. Convert the pay period amount to a monthly amount. (5-1-11)

e. Fluctuating Income. When income fluctuates each pay period and the rate of pay remains the same, average the income from the past thirty (30) days to determine the average pay period amount. Convert the average pay period amount to a monthly amount. (5-1-11)

0767. CONVERTING INCOME TO A MONTHLY AMOUNT.

If a full month's income is expected, but is received on other than a monthly basis, convert the income to a monthly amount using one of the formulas below: (5-1-11)

01. Weekly Amount. Multiply weekly amounts by four point three (4.3). (5-1-11)

02. Bi-Weekly Amount. Multiply bi-weekly amounts by two point one five (2.15). (5-1-11)

03. Semi-Monthly Amount. Multiply semi-monthly amounts by two (2). (5-1-11)

04. **Salary Amount.** Use the exact monthly income if it is expected for each month of the certification period. (5-1-11)

078. ASSET CAP.
A family must not be in possession of assets exceeding one million dollars (\$1,000,000). (10-1-16)T

~~079.~~ -- 099. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

103. COOPERATION IN ESTABLISHMENT OF PATERNITY AND OBTAINING SUPPORT.

If a minor child has a non-custodial parent, the biological or adoptive parent, or other individual who lives with the child and exercises parental control, must cooperate in establishing paternity for the child and obtaining child support. (3-26-08)

01. Providing All Information. “Cooperation” includes providing all information to identify and locate the non-custodial parent. At a minimum, the first and last name of the non-custodial parent and at least two (2) of the following pieces of information must be provided. (3-26-08)

- a. Birth date; (3-26-08)
- b. Social Security Number; (3-26-08)
- c. Current address; (3-26-08)
- d. Current phone number; (3-26-08)
- e. Current employer; (3-26-08)
- f. Make, model, and license number of any motor vehicle owned by the non-custodial parent; and (3-26-08)
- g. Name, phone numbers and addresses of the parents of the non-custodial parent. (3-26-08)

02. Established Case for Custodial Parent. After Child Support Services (CSS) has established a case for a custodial parent, all child support payments must be sent directly to CSS. If the custodial parent receives child support directly from the non-custodial parent, the custodial parent must forward the payment to CSS for receipting. (3-26-08)

03. Failure to Cooperate. (3-26-08)

a. Failure to cooperate includes failure to complete the non-custodial or alleged parent information or filiation affidavit as requested, failure to sign the limited power of attorney, or evidence of failure to cooperate provided by Child Support Services (CSS). ~~(3-26-08)~~(10-1-16)T

b. When a parent or individual fails to cooperate in establishing paternity and obtaining support, the family is not eligible to participate in the Idaho Child Care Program. (3-26-08)

04. Exemptions From Cooperation Requirement. The parent or individual will not be required to provide information about the non-custodial or alleged parent or otherwise cooperate in establishing paternity or obtaining support if good cause for not cooperating exists. Good cause for failure to cooperate must be provided. (3-26-08)

- a. Good cause for failure to cooperate in obtaining support is: (3-26-08)

- i. Proof the child was conceived as a result of incest or forcible rape; (3-26-08)
 - ii. Proof the non-custodial parent may inflict physical or emotional harm to the children, the custodial parent or individual exercising parental control. This must be supported by medical evidence, police reports, or as a last resort, an affidavit from a knowledgeable source; and (3-26-08)
 - iii. Substantial and credible proof is provided indicating the custodial parent cannot provide the minimum information regarding the non-custodial parent. (3-26-08)
- b.** A parent or individual claiming good cause for failure to cooperate must submit a notarized statement to the Department identifying the child for whom the exemption is claimed. The statement must list the reasons for the good cause claim. (3-26-08)
- c.** The cooperation requirement will be waived if good cause exists. No further action will be taken to establish paternity or obtain support. If good cause does not exist the parent will be notified that he is not eligible to receive Idaho Child Care program benefits, until child support cooperation as been obtained. (3-26-08)

104. FAMILY COMPOSITION.

A family is a group of individuals living in a common residence, whose combined income is considered in determining eligibility and the child care benefit amount. No individual may be considered a member of more than one (1) family in the same month. The following individuals are included in determining the family composition: (4-2-08)

- 01. Married Parents.** Married parents living together in a common residence, includes biological, adoptive, step-parent, and foster parent. (5-1-11)
- 02. Unmarried Parents.** Unmarried parents who live in the same home and who have a child in common living with them. (4-2-08)
- 03. Dependents.** Individuals who are claimed as dependents for tax purposes of a parent or caretaker. ~~(4-2-08)~~(10-1-16)T
- 04. Minor Parent.** A minor parent and child are considered a separate family when they apply for child care benefits, even if they live with other relatives. (4-2-08)
- 05. Individual Acting In Loco Parentis.** An individual acting in loco parentis who is eligible to apply for child care benefits, and the child's natural or adoptive parents are not living in the home. ~~(4-2-08)~~(10-1-16)T
- 06. Citizenship or Alien Status Requirement.** Family members who are not citizens or living lawfully in the United States will not be counted in the family size. The income of those non-counted family members will be counted when determining the household's income according to Sections 070 through 099 of these rules. (10-1-16)T

105. ELIGIBLE CHILD.

A family can only receive child care benefits for eligible children. A child is eligible for child care benefits under the following conditions: (4-2-08)

- 01. Immunizations Requirements.** A child must be immunized in accordance with IDAPA 16.02.11, "Immunization Requirements for Children Attending Licensed Daycare Facilities in Idaho." Child care benefits can continue during a reasonable period necessary for the child to be immunized. Parents must provide evidence that the child has been immunized unless the child is attending school. (4-2-08)
- 02. Citizenship or Alien Status Requirement.** A child must be one (1) of the following: (4-2-08)
 - a.** A citizen; (4-2-08)

b. Living lawfully in the United States. (4-2-08)

03. Child's Age Requirement. A child must be under thirteen (13) years of age, ~~with the following exceptions:~~ (4-2-08)

~~a. A child thirteen (13) years of age or older may~~ **to** be eligible for child care benefits, ~~if unless~~ he meets one (1) or more of the following criteria: (4-2-08)(10-1-16)T

~~i.a.~~ **a.** A child is eligible for child care benefits until the month of his ~~eighteenth~~ **nineteenth** birthday if he is physically or mentally incapable of self-care, as verified by a licensed mental health professional or licensed practitioner of the healing arts. (4-2-08)(10-1-16)T

~~i.b.~~ **b.** A child may be eligible for child care benefits until the month of his ~~eighteenth~~ **nineteenth** birthday if a court order, probation order, child protection, or mental health case plan requires constant supervision. (4-2-08)(10-1-16)T

~~b. A child who is eligible under Subsection 105.03.a. of this rule may receive child care benefits until the month of his nineteenth birthday if he is a full-time student and is expected to complete secondary school no later than the month of his nineteenth birthday.~~ (5-1-11)

04. Child Custody. A child may move from one (1) parent's home to the other parent's home on a regular basis. The child may be a member of either household, but not both households. If the parents cannot agree on the child's household for the child care benefit, the child is included in the household with primary custody. Primary custody is determined by where the child is expected to spend fifty-one percent (51%) or more of the nights during a benefit period. When only one (1) parent applies for ICCP benefits, the child may be included in that parent's household even though they do not have primary physical custody of the child. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

200. QUALIFYING ACTIVITIES FOR CHILD CARE BENEFITS.

To be eligible for child care benefits, each parent included in the household must need child care because they are engaged in one (1) of the qualifying activities listed in Subsections 200.01 through 200.05 of this rule. (5-1-11)

01. Employment. The parent is currently employed. (4-2-08)

02. Self-Employment. The parent is currently self-employed in a business that is a sole proprietorship. A sole proprietorship is a business owned by one (1) person. Restrictions apply for self-employment as follows: (5-8-09)

a. For the first ~~six (6)~~ **twelve (12)** months of self-employment benefits, actual activity hours are used. (5-1-11)(10-1-16)T

b. ~~After receiving six (6) months of self-employment child care benefits~~ **At the time of redetermination,** the number of activity hours will be limited. To calculate the activity hours, the ~~gross net~~ monthly self-employment income is divided by the current federal minimum wage. The qualifying activity hours are the lesser of the calculated activity hours or actual activity hours. (5-1-11)(10-1-16)T

03. Training or Education. The parent is attending an accredited education or training program. The following restrictions apply to training or education activities: (4-2-08)

a. On-line classes cannot be counted as a qualifying activity for child care. (4-2-08)

b. Persons ~~with baccalaureate degrees or~~ who are attending post-baccalaureate classes ~~with no other qualifying activity.~~ do not qualify for child care benefits. (4-2-08)(10-1-16)T

c. More than forty ~~-eight~~ (408) months of post-secondary education has been used as a qualifying activity. ~~(4-2-08)~~(10-1-16)T

04. Preventive Services. The parent is receiving preventive services as defined in Section 011 of these rules. The Department will verify the continued need for preventive services at least every three (3) months. (4-2-08)

05. Personal Responsibility Contract (PRC) or Other Negotiated Agreement. The parent is completing Personal Responsibility Contract (PRC) or other self-sufficiency activities negotiated between the Department and the parent. (4-4-13)

(BREAK IN CONTINUITY OF SECTIONS)

202. CESSATION OF QUALIFYING ACTIVITIES.

An eligible family who loses or ceases its qualifying activity, may continue to receive assistance for up to three (3) months to engage in a job search and resume work, or resume attendance at a job training or educational program. (10-1-16)T

~~2023.~~ -- 399. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

401. IN-HOME CARE HEALTH AND SAFETY REQUIREMENTS.

Each in-home care provider is responsible to ensure that health and safety requirements are met for children being cared for in the children's own home. (3-20-14)

01. Health and Safety Inspections. In-home health and safety inspections, described in Section 802 of these rules, are not required for in-home care providers caring for children in the children's own home. (3-20-14)

02. Health and Safety Training. Because in-home care providers are exempt from health and safety inspections, each in-home care provider must annually complete health and safety training provided by the local Health District covering requirements listed in Section 802 of these rules. ~~(3-20-14)~~(10-1-16)T

(BREAK IN CONTINUITY OF SECTIONS)

500. ALLOWABLE CHILD CARE COSTS.

Care provided to an eligible child by an eligible child care provider is payable subject to the following conditions: (4-2-08)

01. Payment for Employment, Training, Education, or Preventive Service Hours. Child care must be reasonably related to the hours of the parent's qualifying activities. (5-1-11)

~~**02. Family Member or Guardian Not Payable.** A parent, step-parent, or unmarried parent will not be paid for providing child care to his child. A guardian will not be paid for providing child care to his ward. Absent parents, or anyone living in the absent parent's home are not eligible to receive ICCP payment. (4-2-08)~~

~~**03. One-Time Registration Fees.** One-time fees for registering a child in a child care facility are payable above the local market rate, if the fee is charged to all who enroll in the facility. Fees may not exceed two hundred fifty dollars (\$250) and must be usual and customary rates charged to all families. Registration fees are separate from local market rates. ~~(4-2-08)~~(10-1-16)T~~

~~**04. Local Market Rates (LMR) for Child Care.** The local market rates are the maximum monthly~~

~~amounts that ICCP will pay for any given category of child care in a geographic area designated by the Department. The local market rates for child care are established based on a comprehensive survey of child care providers. Using information gathered in the survey, including the age of child, the type of child care, and the designated area where the provider does business, a local market rate is specified for each category of child care. The rate survey is conducted biannually. However, due to budgetary considerations, the Department may opt not to update the rate structure following a survey.~~ (4-2-08)

501. NON-ALLOWABLE CHILD CARE COSTS.

Care provided to an eligible child is not payable under the following conditions: (10-1-16)T

01. Family Member or Guardian Providing Child Care. A parent, step-parent, or unmarried parent will not be paid for providing child care to his child. A guardian will not be paid for providing child care to his ward. Absent parents, or anyone living in the absent parent's home are not eligible to receive ICCP payment. (10-1-16)T

02. Provider Living at Same Address as Child. ICCP will not pay for in-home child care if the provider lives at the same address as the child. (10-1-16)T

03. School Tuition, Academic Credit, or Tutoring. ICCP payments will not be made for school tuition, academic credit, or tutoring for school age children; this includes: (10-1-16)T

a. Any services provided to such students during the regular school day, including kindergarten; (10-1-16)T

b. Any services for which such students receive academic credit toward graduation; or (10-1-16)T

c. Any instructional services which supplant or duplicate the academic program of any public or private school. (10-1-16)T

50~~2~~. AMOUNT OF PAYMENT.

Child care payments will be based on Subsections 50~~2~~.01 through 50~~2~~.04 of this rule. (~~4-2-08~~)(10-1-16)T

01. Payment Rate. Payment will be based on the lower of the provider's usual and customary rates or the ~~L~~ocal ~~m~~arket ~~r~~ate (LMR). (~~7-1-09~~)(10-1-16)T

~~a.~~ ~~The local market rate is determined from a survey of providers' child care charges which is conducted every two years. The local market rate is set at the seventy-fifth percentile and updated as the budget allows.~~ (4-2-08)

a. The local market rates for child care are the maximum monthly amounts that ICCP will pay for any given category of child care in a geographic area designated by the Department. The local market rates for child care are established based on a comprehensive survey of child care providers. Using information gathered in the survey, including the age of child, the type of child care, and the designated area where the provider does business, a local market rate is specified for each category of child care. The rate survey is conducted triennially. (10-1-16)T

b. ~~Each Region has a separate local market rate.~~ Payment rates will be determined by the location of the child care facility. (~~4-2-08~~)(10-1-16)T

c. If the child care facility is not in Idaho, the local market rate will be the rate where the family lives. (4-2-08)

~~d.~~ ~~The rate survey will be conducted at least every two (2) years.~~ (4-2-08)

02. Usual and Customary Rates. Rates charged by the child care provider must not exceed the usual and customary rates charged for child care to persons not entitled to receive benefits under ICCP. (7-1-09)

03. In-Home Care. Parents are responsible to pay persons providing care in the child's home the minimum wage, as required by the Fair Labor Standards Act (29 U.S.C. 206a) and other applicable state and federal

requirements. Department payments must not exceed the lower of the hourly federal minimum wage or actual cost of care. (4-2-08)

04. Payments. Payments will be issued directly to eligible providers. ~~A warrant may be issued to a parent only when the parent provides proof the provider was paid in full, and no longer provides child care for the family.~~ (4-2-08)(10-1-16)T

5023. ~~SLIDING FEE SCHEDULES~~ COPAYMENTS.

Eligible families, except TAFI families participating in non-employment TAFI activities and guardians of foster children, must pay part of their child care costs. Providers are responsible for ensuring families pay the determined child care costs and ~~may~~ must not waive ~~or defer~~ these costs. (7-1-09)(10-1-16)T

01. Poverty Rates. Poverty rates will be one hundred thirty percent (130%) of the Federal Poverty Guidelines (FPG) available on the U.S. Health and Human Services website at <http://aspe.hhs.gov/poverty>. The monthly rate will be calculated by dividing the yearly rate by twelve (12). (4-4-13)

02. Calculating Family Payment. Family income and activity for the month of the child care will determine the family share of child care costs. The payment made by the Department will be the allowable local market rate or billed costs, whichever is lower, less the co-payment. (4-4-13)

5034. STUDENT CO-PAYMENT REQUIREMENTS.

01. Post-Secondary Student. (4-11-15)

a. A post-secondary student who works less than ten (10) hours per week will be required to pay a co-payment. (4-11-15)

b. A post-secondary student who works ten (10) hours or more per week will have a co-payment based on family income. (4-11-15)

02. High School or GED Student. A student who is in high school, or who is taking GED courses will have a co-payment based on family income. (4-11-15)

5045. INTERIM CHILD CARE PAYMENT.

~~A family that uses a relative provider is not eligible for interim child care payments.~~ If child care arrangements would otherwise be lost, child care may be paid ~~under the following conditions:~~ when a child temporarily stops attending child care for no longer than (1) calendar month and plans to return. (4-2-08)(10-1-16)T

~~**01. Break in Employment or Education.** During a break in employment or education of one (1) month or less. (4-2-08)~~

~~**02. Children Temporarily Out of the Home.** While children are temporarily away from the home for a period of one (1) month or less. (4-2-08)~~

5056. -- 599. (RESERVED)

**CHANGE REPORTING REQUIREMENTS FOR THOSE
RECEIVING CHILD CARE BENEFITS
(Sections 600 - 699)**

600. CHANGE REPORTING REQUIREMENTS.

A family who receives child care benefits must report the following permanent changes by the tenth day of the month following the month in which the change occurred. (4-4-13)

01. Change in Eligible Activity Hours. (4-4-13)

02. Change in Your Permanent Address. (5-1-11)
03. Change in Household Composition. (4-4-13)
04. Change in Income. (10-1-16)T

a. When the household's total gross income exceeds one hundred thirty percent (130%) of the Federal Poverty Guideline (FPG) for the household size. (4-4-13)

b. When the household's total gross income exceeds eighty-five percent (85%) of the State Median Income (SMI) for a family of the same size. (10-1-16)T

05. Change in Child Care Provider. (5-1-11)

(BREAK IN CONTINUITY OF SECTIONS)

602. REDETERMINATION OF ELIGIBILITY FOR CHILD CARE BENEFITS.

01. Redetermination. The Department must redetermine eligibility for child care benefits at least every ~~six (6)~~ twelve (12) months. ~~Eligibility must be redetermined every three (3) months for each family in which child care is needed for preventive services.~~ (4-1-13)(10-1-16)T

02. Graduated Phase Out. At the time of redetermination, if a household's income exceeds one hundred thirty percent (130%) of the Federal Poverty Guidelines (FPG) for family of the same size, but does not exceed eighty-five percent (85%) of the State Median Income (SMI) for a family of the same size, benefits for eligible children will be paid for three (3) months in an amount equal to the payment amount of the 12th month of eligibility, if all other eligibility criteria are met. (10-1-16)T

(BREAK IN CONTINUITY OF SECTIONS)

701. RECOUPMENT OF OVERPAYMENTS.

01. Recoupment of Overpayments. The Department may recoup or recover the amount paid for child care services from a provider. Interest will accrue on these overpayments at the statutory rate set under Section 28-22-104, Idaho Code, from the date of the final determination of the amount owed for services. ~~Recoupment of an overpayment based on Department error may be collected from parents or providers when the overpayment is one hundred dollars (\$100), or more.~~ Interest will not accrue on overpayments made due to Department error. An overpayment due to family or provider error, IPV or fraud must be recovered in full. (7-1-09)(10-1-16)T

02. Parental Repayment Requirement. A parent must repay any overpayment resulting from the parent's failure to report changes within ten (10) days as required in Section 600 of these rules. The parent may negotiate a repayment schedule with the Department. Failure to comply with the negotiated repayment agreement will result in loss of the family's eligibility to receive child care benefits. Ineligibility will continue until the parent repays the overpayment or a new repayment agreement is negotiated with the Department. (5-1-11)

(BREAK IN CONTINUITY OF SECTIONS)

750. TERMINATION OF PROVIDER STATUS.

Under Section 56-209h, Idaho Code, the Department may terminate the provider agreement of, or otherwise deny provider status for a period up to five (5) years from the date the Department's action becomes final to any individual or entity providing ICCP. (7-1-09)

- 01. Submits an Incorrect Claim.** Submits a claim with knowledge that the claim is incorrect. (7-1-09)
 - 02. Fraudulent Claim.** Submits a fraudulent claim. (7-1-09)
 - 03. Knowingly Makes a False Statement.** Knowingly makes a false statement or representation of material facts in any document required to be maintained or submitted to the Department. (7-1-09)
 - 04. Immediate Access to Documentation.** Fails to provide, upon written request by the Department, immediate access to documentation required to be maintained. (7-1-09)
 - 05. Non-Compliance With Rules and Regulations.** Fails repeatedly or substantially to comply with the rules and regulations governing Idaho child care payments. (7-1-09)
 - 06. Violation of Material Term or Condition.** Knowingly violates any material term or condition of the provider agreement. (7-1-09)
 - 07. Failure to Repay.** Has failed to repay, or was a managing employee or had an ownership or control interest in any entity that has failed to repay, any overpayments or claims previously found to have been obtained contrary to statute, rule, regulation, or provider agreement. (7-1-09)
 - 08. Fraudulent or Abusive Conduct.** Has been found, or was a managing employee in any entity which has been found, to have engaged in fraudulent conduct or abusive conduct ~~in connection with the delivery of child care services.~~ (7-1-09)(10-1-16)T
 - 09. Failure to Meet Qualifications.** Fails to meet the qualifications specifically required by rule or by any applicable licensing entity. (7-1-09)
 - 10. Committed an Offense or Act Not in Best Interest of Child Care Participants.** The provider has committed an offense or act which the Department determines is inconsistent with the best interests of ICCP participants. (10-1-16)T
- 751. REFUSAL TO ENTER INTO AN AGREEMENT.**
The Department may refuse to enter into a provider agreement for the reasons described in Subsections 751.01 through 751.06 of this rule. (7-1-09)
- 01. Convicted of a Felony.** The provider has been convicted of a felony ~~relating to their involvement in a public assistance program or of a crime listed in Section 805 of these rules~~ or is under investigation for the commission of a felony. (7-1-09)(10-1-16)T
 - 02. Committed an Offense or Act Not in Best Interest of Child Care Participants.** The provider has committed an offense or act which the Department determines is inconsistent with the best interests of ICCP participants. (7-1-09)
 - 03. Failed to Repay.** The provider has failed to repay the Department monies which had been previously determined to have been owed to the Department. (7-1-09)
 - 04. Investigation Pending.** The provider has a pending investigation for program fraud or abuse. (7-1-09)
 - 05. Terminated Provider Agreement.** The provider was the managing employee, officer, ~~or~~ owner, or spouse, partner, or relative of an owner of an entity whose provider agreement was terminated under Section 750 of these rules. (7-1-09)(10-1-16)T
 - 06. Excluded Individuals.** The provider has a current exclusion from participation in federal programs by the Office of Inspector General List of Excluded Individuals and Entities. (7-1-09)

(BREAK IN CONTINUITY OF SECTIONS)

801. LIMIT ON PROVIDER PAYMENT.

~~ICCP will not pay for in-home child care if the provider lives at the same address as the child, unless the child care provider is a relative who is not acting "in loco parentis." A roommate, significant other, cousin, or any other individual that lives in the same home as the child will not be paid for providing child care. (4-2-08)~~

801. HEALTH AND SAFETY TRAINING.

All child care providers must complete a series of health and safety trainings during an orientation period of not more than ninety (90) days, in addition to ongoing annual training that address each of the following topics: (10-1-16)T

01. **Infectious Diseases.** The prevention and control of infectious diseases (including immunization). (10-1-16)T
02. **Sudden Infant Death Syndrome.** The prevention of sudden infant death syndrome and use of safe sleeping practices. (10-1-16)T
03. **Medication.** The administration of medication, consistent with standards for parental consent. (10-1-16)T
04. **Allergic Reactions.** The prevention of and response to emergencies due to food and allergic reactions. (10-1-16)T
05. **Environmental Safety.** Building and physical premises safety, including identification of and protection from hazards, bodies of water, and vehicular traffic. (10-1-16)T
06. **Child Abuse Prevention.** Prevention of shaken baby syndrome and abusive head trauma. (10-1-16)T
07. **Emergency Preparedness.** Emergency preparedness and response planning for emergencies resulting from a natural disaster, or a man-caused event. (10-1-16)T
08. **Hazardous Substances.** Proper handling, storage, and disposal of medicines, cleaning supplies, and other hazardous substances, including biocontaminants. (10-1-16)T
09. **Transportation.** Appropriate precautions in transporting children, including the use of child safety restraints and seat belts. (10-1-16)T

802. HEALTH AND SAFETY REQUIREMENTS.

All providers must comply with the health and safety requirements listed in Subsections 802.01 through 802.103 of this rule. All providers must agree to an annual, unannounced health and safety inspection, with the exception of in-home child care described in Section 401 of these rules. Compliance with these standards does not exempt a provider from complying with stricter health and safety standards under state law, tribal law, local ordinance, or other applicable law. ~~(3-20-14)~~(10-1-16)T

- 01. Age of Provider.** All child care providers providing services must be eighteen (18) years old or older. Persons sixteen (16) or seventeen (17) years old may provide child care if they have direct, on-site supervision from a licensed child care provider who is at least eighteen (18) years old. (4-2-08)
- 02. Sanitary Food Preparation.** Food for use in child care facilities must be prepared and served in a sanitary manner. Utensils and food preparation surfaces must be cleaned and sanitized before using to prevent contamination. (4-2-08)
- 03. Food Storage.** All food served in child care facilities must be stored to protect it from potential

contamination. (4-2-08)

04. Hazardous Substances. Medicines, cleaning supplies, and other hazardous substances must be handled safely and stored out of the reach of children. Biocontaminants must be disposed of appropriately. ~~(4-2-08)~~(10-1-16)T

05. Emergency Communication. A telephone or some type of emergency communication system is required. (4-2-08)

06. Smoke Detectors, Fire Extinguishers, and Exits. A properly installed and operational smoke detector must be on the premises where child care occurs. Adequate fire extinguishers and fire exits must be available on the premises. (4-2-08)

07. Hand Washing. Each provider must wash his hands with soap and water at regular intervals, including before feeding, after diapering or assisting children with toileting, after nose wiping, and after administering first aid. (4-2-08)

08. CPR/First Aid. Providers must insure that at all times children are present at least one (1) adult on the premises has current certification in pediatric rescue breathing (CPR) and pediatric first aid treatment from a certified instructor. ~~(4-2-08)~~(10-1-16)T

09. Health of Provider. Each provider must certify that he does not have a communicable disease or any physical or psychological condition that might pose a threat to the safety of a child in his care. (4-2-08)

10. Child Abuse. Providers must report suspected child abuse to the appropriate authority. (4-2-08)

11. Transportation. Providers who transport children as part of their child care operations must operate safely and legally, using child safety restraints and seat belts as required by state and local statutes.(10-1-16)T

12. Disaster and Emergency Planning. Providers must have documented policies and procedures planning for emergencies resulting from a natural disaster, or man-caused event that include: (10-1-16)T

a. Evacuation, relocation, shelter-in-place, and lock-down procedures, and procedures for communication and reunification with families, continuity of operations, and accommodation of infants and toddlers, children with disabilities, and children with chronic medical conditions. (10-1-16)T

b. Procedures for staff and volunteer emergency preparedness training and practice drills. (10-1-16)T

c. Guidelines for the continuation of child care services in the period following the emergency or disaster. (10-1-16)T

13. Environmental Safety. Building and physical premises must be safe, including identification of and protection from hazards that can cause bodily injury including electrical hazards, bodies of water, and vehicular traffic. (10-1-16)T

~~803. TEMPORARY REGISTRATION OF AN ICCP PROVIDER APPLICANT.~~

~~The Department may issue a temporary registration to an ICCP provider applicant pending completion of the necessary health and safety inspections, CPR/First Aid Certification, and Department criminal history and background check. A temporary ICCP registration may be issued under the following conditions:~~ (4-9-09)

~~**01. Length of Temporary Registration.** A temporary registration will be issued for a period of time not to exceed ninety (90) days, unless otherwise extended by the Department. (4-2-08)~~

~~**02. Applicants Must Sign a Provider Agreement.** All ICCP provider applicants must sign the ICCP provider agreement prior to issuance of a temporary registration. (4-2-08)~~

~~**03. Self Disclosure.** Individuals age thirteen (13) or older who have direct contact with or provide~~

~~direct care to children receiving ICCP benefits, must self-disclose all arrests and convictions pending satisfactory completion of the criminal history and background check. If a disqualifying crime as described in IDAPA 16.05.06, "Criminal History and Background Checks," is disclosed, a temporary registration will not be issued. (4-9-09)~~

803. CHILD CARE PROVIDER TRAINING REQUIREMENTS.

Each child care provider must receive and ensure that each staff member who provides child care receives and completes twelve (12) hours of ongoing training every twelve (12) months after the staff member's date of hire. (10-1-16)T

01. Training Contents. Training must be related to continuing education in child development, teaching and curriculum, health and safety, and business practices. The following will not count towards the required twelve (12) hours of annual training: (10-1-16)T

a. Pediatric rescue breathing (CPR) and pediatric first aid treatment training; and (10-1-16)T

b. Trainings related to participation with the Child and Adult Care Food Program (CACFP). (10-1-16)T

02. Documented Training. It is the responsibility of the child care provider to ensure that each staff member who provides child care has completed twelve (12) hours of training each year. The training must be documented in the staff member's record. (10-1-16)T

03. Staff Training Records. Each child care provider is responsible for maintaining documentation of staff's training and must produce this documentation when the provider agreement is renewed annually. (10-1-16)T

804. CHILD CARE PROVIDER AGREEMENT.

01. Compliance. All providers must sign and comply with a provider agreement. ~~(4-2-08)~~(10-1-16)T

02. Provide Direct Care. Except for Child Care Centers described in Subsection 101.01 of these rules, the individual who signs the provider agreement must provide the majority of direct care to the children in that child care facility. (10-1-16)T

805. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENT.

Applicants, providers, employees, volunteers, and all other individuals age thirteen (13) or older who have direct contact with or provide care to children eligible for ICCP benefits must comply with the requirements and receive clearance as provided in IDAPA 16.05.06, "Criminal History and Background Checks," every five (5) years. ~~(4-9-09)~~(10-1-16)T

(BREAK IN CONTINUITY OF SECTIONS)

807. PARENT OR CARETAKER ACCESS TO CHILD CARE PREMISES.

Providers serving families who receive a child care subsidy ~~shall~~ must allow parents or caretakers unlimited access to their children and to persons giving care, except that access to children will not be required if prohibited by court order. ~~(4-2-08)~~(10-1-16)T

808. REPORTING REQUIREMENTS FOR PROVIDERS.

A child care provider must report any of the following changes within ten (10) days: (4-2-08)

01. Change in Provider Charges. The provider changes any rate for child care services. (4-2-08)

02. Child Stops Attending Care. A child covered under ICCP stops attending child care, or is taken to another child care provider. (4-2-08)

03. Change of Provider Address. The provider changes the location where child care is provided.

(4-2-08)

04. Change in Who Lives in Home. An individual who provides child care in his home must report when any other person moves into the home. (4-2-08)

05. Intent Not to Renew License. The provider intends not to renew his license, or other required certifications. (4-2-08)

06. Death or Serious Injury. Providers must report when a child sustains a serious injury or dies while at the location of, or as a result of participating in child care. (10-1-16)T

809. ~~(RESERVED)~~ CONSUMER EDUCATION INFORMATION. The Department will make public by electronic means, in an easily accessible format: (10-1-16)T

01. Monitoring and Inspection Reports. The results of all child care monitoring and inspection reports. (10-1-16)T

02. Substantiated Complaints. Substantiated complaints about failure to comply with child care laws, rules, and policies, that include information on the date of such an inspection, and where applicable, information on corrective action taken. (10-1-16)T

03. Death and Serious Injury. The total number of deaths, serious injuries, and instances of substantiated child abuse that occurred in child care settings each year. (10-1-16)T

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

18.01.10 - PRODUCERS HANDLING OF FIDUCIARY FUNDS

DOCKET NO. 18-0110-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 41-211, 41-1024 and 41-1025, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The existing rule is proposed to be amended concerning bail to provide deposit rules for cash collateral similar to that of other funds that insurance producers receive from clients, namely, to treat cash collateral as fiduciary funds.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Volume 16-7, page 70](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this proposed rule, contact Thomas A. Donovan at (208) 334-4214, or at tom.donovan@doi.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the attention of the undersigned and must be delivered either by hard copy or via email to the same email address for questions set forth above on or before Wednesday, September 28, 2016.

DATED this 5th Day of August, 2016.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83702-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0110-1601
(Only Those Sections With Amendments Are Shown.)

000. LEGAL AUTHORITY.

This rule is promulgated pursuant to authority granted by Sections 41-211, ~~and~~ 41-1024, and 41-1025, Idaho Code. (4-11-06)()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 18.01.10, "Producers Handling of Fiduciary Funds." (4-11-06)

02. Scope. This rule will affect "Producers," as defined in Section ~~41-1003, Idaho Code~~ 18.01.10.010 of this rule, including bail agents who handle funds held in a fiduciary capacity. (4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Cash Collateral. All funds received as collateral by a producer in connection with a bail bond transaction in the form of cash, check, money order, other negotiable instrument, debit or credit card payment, or other electronic funds transfer, given as security to obtain a bail bond, as referenced in Section 41-1043, Idaho Code. ()

~~02.~~ **Fiduciary Fund Account.** A financial account established to hold fiduciary funds as provided in Section 016. (4-11-06)

~~03.~~ **Fiduciary Funds.** All premiums, return premiums, premium taxes, funds as collateral, and fees received by a producer. Fiduciary funds shall include: (4-11-06)()

a. All funds paid to a producer for selling, soliciting or negotiating policies of insurance except for those earned fees recognized by statute as earned by the producer upon receipt which are payable to the producer and not the insurance company, pursuant to Section 41-1030, Idaho Code. (4-11-06)

b. All funds received by a producer from or on behalf of a client or premium finance company that are to be paid to an insurance company, its agents, or to the producer's employer. (4-11-06)

c. All funds provided to a producer by an insurance company or its agents that are to be paid to a policyholder or claimant pursuant to a contract of insurance. (4-11-06)

d. All checks or other negotiable instruments collected by the producer that are made payable to the insurer. (4-11-06)

e. Cash collateral. ()

~~04.~~ **Premium.** The consideration for insurance by whatever name called, and as more fully defined by Section 41-1803, Idaho Code. (4-11-06)

~~05.~~ **Producer.** A person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including, without limitation, bail agents as described in Section 41-1039, Idaho Code. (4-11-06)()

~~056.~~ **Receive.** To collect or otherwise take actual or constructive possession of fiduciary funds. Receiving, includes but is not limited to, taking possession of money, checks, or other negotiable instruments. If fiduciary funds are in the form of a credit or offset on an account or other liability for the benefit of the consumer, without the producer actually taking possession of the funds, then constructive receipt shall be deemed to have occurred on the due date to the insurer. (4-11-06)

011. -- 013. (RESERVED)

014. FIDUCIARY FUND ACCOUNT.

01. Payable to an Insurer. Fiduciary funds that are in the form of a check or another negotiable instrument that is made payable to an insurer as described in Subsection 010.02.d. shall be remitted to the insurer within the time period as set forth in the terms and conditions as required by the insurer, or if not specified, then within twenty one (21) days of receipt. (4-11-06)

02. Payable to a Policyholder. Fiduciary funds that are in the form of a check or another negotiable instrument that is made payable to a policyholder or claimant as described in Subsection 010.02.c. shall be remitted to the policyholder or claimant within fourteen (14) days of receipt or as required by the terms of the policy of insurance, the insurer, or applicable law. (4-11-06)

03. All Other Fiduciary Funds. All other fiduciary funds received by the producer, except as described under Subsections 014.01 and 014.02 must be deposited into a fiduciary fund account according to the following schedule: (4-11-06)

a. If in the form of cash, within seven (7) days of receipt, except that, when a producer holds fiduciary funds in the form of cash that exceed two thousand dollars (\$2,000), such funds must be deposited within three (3) business days. (4-11-06)

b. If in the form of checks, money orders, ~~or~~ other negotiable instruments, debit or credit card payments, or other electronic funds transfer, received or collected by the producer, within seven (7) days of receipt, except that the producer may remit such funds to the following: (4-11-06)()

i. Another licensed producer or licensed business entity, subject to the time frames of Subsection 014.03.b.; or (4-11-06)

ii. A person designated by the insurer who has the obligation to remit the fiduciary funds to the insurer subject to the time frames of Subsection 014.03.b. (4-11-06)

04. Document the Receipt of Fiduciary Funds. A producer who receives fiduciary funds shall document the receipt of those funds in sufficient detail to determine, at a minimum, the date received, the name of the payee, and the amount received. If the producer receives cash, including cash collateral, the producer shall give the payer a detailed receipt at the time of payment. The receipt shall include an indication that cash was received, the date received, the amount received, the payer's name, the payee's name, the purpose of payment, and any other information important to the transaction. The producer shall maintain the receipt records as records of a transaction, and keep those records for a period of at least five (5) years. (4-11-06)()

015. DEPOSIT OF OTHER FUNDS IN ACCOUNT.

A producer may deposit other additional funds for the sole purpose of: (4-11-06)

01. ~~Establishing~~ Reserves for ~~Payment of~~ Return Premiums. Establishing reserves for payment of return premiums. (4-11-06)()

02. ~~Advancing~~ Funds ~~Sufficient~~ to Pay Bank Charges. Advancing funds sufficient to pay bank charges. (4-11-06)()

03. Contingencies. For any contingencies that may arise in the business of receiving and transmitting premium or return premium funds or cash collateral (any such deposit is hereinafter referred to as "voluntary

deposit”).

~~(4-11-06)~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

019. PERMISSIBLE DISTRIBUTION OF FIDUCIARY FUNDS.

Distributions from a fiduciary fund account shall only be made for the following purposes, and in the manner stated: (4-11-06)

01. Remit Premiums. To remit premiums to an insurer or an insurer’s designee pursuant to a contract of insurance; (4-11-06)

02. Return Premiums. To return premiums to an insured or other person or entity entitled to the premiums; (4-11-06)

03. Remit Surplus Lines Taxes and Stamping Fees. To remit surplus lines taxes and stamping fees collected to the appropriate state; (4-11-06)

04. Reimburse Voluntary Deposits. To reimburse voluntary deposits made by the producer to the extent that the funds in the fiduciary account exceed the amount necessary to meet all fiduciary obligations, only if the reimbursement can be matched and identified with the previous voluntary deposit. (4-11-06)

05. Transfer or Withdraw Accrued Interest. To transfer or withdraw accrued interest to the extent that fiduciary fund account funds exceed the amount necessary to meet all fiduciary obligations, only if the reimbursement can be matched and identified with the previous interest deposit by the financial institution. (4-11-06)

06. Transfer or Withdraw Actual Commissions. To transfer or withdraw actual commissions and those earned fees recognized as earned by the producer, upon receipt, which are payable to the producer, only if the commissions and fees can be matched and identified with funds previously deposited in the fiduciary account. (4-11-06)

07. Pay Charges Imposed. To pay charges imposed by the financial institution that directly relate to the operation and maintenance of the fiduciary funds account to the extent that fiduciary account funds exceed fiduciary obligations; and (4-11-06)

08. Transfer Funds. To transfer funds from one (1) fiduciary fund account to another fiduciary fund account. (4-11-06)

09. Return Cash Collateral. To return cash collateral to the person who deposited the cash collateral with the producer within fourteen (14) days of the date notice is received that the obligation, the satisfaction of which was secured by the cash collateral, has been discharged. ()

10. Convert Cash Collateral. To convert cash collateral where the defendant or other responsible party fails to satisfy the obligation of the bail bond and the bail or obligation was not exonerated by the court but instead executed by the court, provided such conversion is compliant with the contract between the producer and the person who deposited the cash collateral. ()

(BREAK IN CONTINUITY OF SECTIONS)

022. TIMELY DISBURSEMENT OF FIDUCIARY FUNDS.

In addition to the requirements of Section 014, after receiving fiduciary funds, a producer shall: (4-11-06)

01. Remit Premiums. Remit premiums directly to an insurer or an insurer’s designee within the time period as set forth in the terms and conditions as required by the insurer, or if not specified, within fourteen (14) days

of receipt; (4-11-06)

02. Return Money Received. Return to the payer the money received as a premium deposit which is retained by the producer or returned to the producer by the insurer to the payer by the earlier of: (4-11-06)

a. Fourteen (14) days from the date the premium is received by the producer from the insurer, or (4-11-06)

b. Fourteen (14) days from the date the insurer notifies the insurance applicant that coverage has been denied if the producer retained the premium deposit. (4-11-06)

03. Refund Received from the Insurer. Issue a refund received from the insurer within fourteen (14) days by disbursing money to the insured or other party entitled thereto by notifying the insured that the refund is being applied to an outstanding amount owed or to be owed by the insured. If the producer is applying the refund to an outstanding amount owed by the insured, the producer shall obtain the insured's permission and provide the insured a detailed description of the amount owed to which the refund is being applied. (4-11-06)

04. Dispute of Entitlement of Funds. If there is a dispute as to entitlement of funds under Subsections 022.01 or 022.03, notify the parties of the dispute and seek to resolve the dispute and document the steps taken to resolve the dispute. (4-11-06)

05. Funds Held for More Than Ninety Days. If fiduciary funds within the scope of Subsections 022.01 or 022.03 are held for more than ninety (90) days, investigate to determine the entitlement to fiduciary funds and pay those fiduciary funds when due to the appropriate person in accordance with this section. (4-11-06)

06. Return Cash Collateral. Return cash collateral to the person who deposited the cash collateral with the producer within fourteen (14) days of the date notice is received that the obligation, the satisfaction of which was secured by the cash collateral, is discharged. ()

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

18.01.50 - ADOPTION OF THE INTERNATIONAL FIRE CODE

DOCKET NO. 18-0150-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 41-211 and 41-254, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The existing rule is proposed to be amended to adopt the 2015 International Fire Code to match the anticipated adoption of the 2015 International Building Code by the Division of Building Safety.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Volume 16-7, page 72](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The purpose of this proposed rule is to adopt the 2015 International Fire Code, with any variations noted within the rule text.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this proposed rule, contact Knute Sandahl at (208) 334-4377, or at Knute.sandahl@doi.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the attention of the undersigned and must be delivered either by hard copy or via email to the same email address for questions set forth above on or before Wednesday, September 28, 2016.

DATED this 5th Day of August, 2016.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83702-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0150-1601
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

01. **201~~2~~⁵ International Fire Code.** In accordance with Section 67-5229, Idaho Code, and pursuant to the authority provided by Section 41-253, Idaho Code, the State Fire Marshal hereby adopts the 201~~2~~⁵ edition of the International Fire Code as published by the International Code Council. Any revisions, additions, deletions and/or appendices to the 201~~2~~⁵ International Fire Code are included herein. (3-20-14)()

02. **Availability of Referenced Material.** Copies of the 201~~2~~⁵ edition of the International Fire Code are available for public inspection at the office of the State Fire Marshal. The 201~~2~~⁵ International Fire Code and supplements thereto may be purchased by writing the International Code Council, ~~Northwest Resource Center, 2122 112th Ave NE, Suite C, Bellevue, WA 98004~~ 25442 Network Place, Chicago, Illinois 60673 or online through the electronic store on the Council's website at <http://www.iccsafe.org/Pages/default.aspx>. (3-20-14)()

(BREAK IN CONTINUITY OF SECTIONS)

020. ~~DEFINITION OF CODE OFFICIAL~~, SECTION 202, INTERNATIONAL FIRE CODE.

01. **Fire Code Official.** Add "or as appropriate the Idaho State Fire Marshal" to the end of the definition for FIRE CODE OFFICIAL in Section 202 of the International Fire Code. (3-20-14)()

02. **Driveway.** Add "DRIVEWAY. A vehicular ingress and egress route that serves no more than five (5) single family dwellings, not including accessory structures." ()

03. **Fire Station.** Add "FIRE STATION. A building, or portion of a building that provides, at a minimum, all weather protection for fire apparatus. Temperatures inside the building used for this purpose must be maintained at above thirty-two (32) degrees Fahrenheit." ()

021. CHAPTER 5 FIRE SERVICE FEATURES.

Make the following changes within Chapter 5 of the International Fire Code; (3-20-14)

01. **Section 501.** (4-7-11)

a. To section 501.3 after the phrase, Construction documents for proposed, add the word "driveways." (4-7-11)

b. To section 501.4 after the phrase, When fire apparatus access roads, add the word "driveways." (4-7-11)

02. **Section 502.**

a. To section 502, add the following ~~definition in, word~~ "DRIVEWAY. A vehicular ingress and egress route that serves no more than five (5) single family dwellings, not including accessory structures." (4-7-11)()

b. To section 502, add the words "FIRE STATION." ()

03. **Section 503.** (4-7-11)

~~*a.*~~ ~~To section 503, add the following definition, “FIRE STATION, A building, or portion of a building that provides, at a minimum, all weather protection for fire apparatus. Temperatures inside the building used for this purpose must be maintained at above thirty-two (32) degrees Fahrenheit.” (4-7-11)~~

ba. To section 503 add the words, “AND DRIVEWAYS” to the section heading. (4-7-11)

eb. To section 503.1.1 add the following sentence, “Driveways shall be provided and maintained in accordance with Sections 503.7.1.1 through 503.1.3.” ~~(3-20-14)()~~

~~*ec.*~~ To section 503.6 delete the sentence, The installation of security gates across a fire apparatus access road shall be approved by the fire chief. (4-7-11)

ed. Add the following section, “503.7 Driveways. Driveways shall be provided when any portion of an exterior wall of the first story of a building is located more than 150 feet (45720mm) from a fire apparatus access road. Driveways shall provide a minimum unobstructed width of 12 feet (3658mm) and a minimum unobstructed height of 13 feet 6 inches (4115mm). Driveways in excess of 150 feet (45720mm) in length shall be provided with turnarounds. Driveways in excess of 200 feet (60960mm) in length and less than 20 feet (6096mm) in width may require turnouts in addition to turnarounds.” (4-7-11)

fe. Add the following section, “503.7.1 Limits. A driveway shall not serve in excess of five single family dwellings.” (4-7-11)

gf. Add the following section, “503.7.2 Turnarounds. Driveway turnarounds shall have an inside turning radius of not less than 30 feet (9144mm) and an outside turning radius of not less than 45 feet (13716mm). Driveways that connect with an access road or roads at more than one point may be considered as having a turnaround if all changes of direction meet the radius requirements for driveway turnarounds.” (4-7-11)

hg. Add the following section, “503.7.3 Turnouts. Where line of sight along a driveway is obstructed by a man-made or natural feature, turnouts shall be located as may be required by the fire code official to provide for safe passage of vehicles. Driveway turnouts shall be of an all-weather road surface at least 10 feet (3048mm) wide and 30 feet (9144mm) long.” (4-7-11)

ih. Add the following section, “503.7.4 Bridge Load Limits. Vehicle load limits shall be posted at both entrances to bridges on driveways and private roads. Design loads for bridges shall be established by the fire code official.” (4-7-11)

ji. Add the following section, “503.7.5 Address markers. All buildings shall have a permanently posted address, which shall be placed at each driveway entrance and be visible from both directions of travel along the road. In all cases, the address shall be posted at the beginning of construction and maintained thereafter. The address shall be visible and legible from the road on which the road on which the address is located. Address signs along one-way roads shall be visible from both the intended direction of travel and the opposite direction. Where multiple address’s are required at a single driveway, they shall be mounted on a single post, and additional signs shall be posted at locations where driveways divide.” (4-7-11)

kj. Add the following section, “503.7.6 Grade. The gradient for driveways shall not exceed 10 percent unless approved by the fire code official.” (4-7-11)

lk. Add the following section, “503.7.7 Security Gates. Where security gates are installed, they shall have an approved means of emergency operation. The security gates and emergency operation shall be maintained operational at all times.” (4-7-11)

ml. Add the following section, “503.7.8 Surface. Driveways shall be designed and maintained to support the imposed loads of local responding fire apparatus and shall be surfaced as to provide all weather driving capabilities.” (4-7-11)

04. Section 507. To section 507.2 Type of water supply. delete the existing language and add the following, “A water supply shall consist of water delivered by fire apparatus, reservoirs, pressure tanks, elevated

tanks, water mains or other sources approved by the fire code official capable of providing the required fire flow. Exception. The water supply required by this code shall only apply to structures served by a municipal fire department or a fire protection district and within ten miles (16093m) of a responding fire station.” (4-7-11)

022. -- 026. (RESERVED)

027. ALTERNATIVE AUTOMATIC FIRE-EXTINGUISHING SYSTEMS, SECTION 904.1.1, INTERNATIONAL FIRE CODE.

Add the following language to the beginning of section 904.1.1 of the International Fire Code, “If required by the authority having ~~the~~ jurisdiction,”. ~~(3-20-14)~~()

(BREAK IN CONTINUITY OF SECTIONS)

052. REFERENCED STANDARDS, CHAPTER 80, INTERNATIONAL FIRE CODE.

Beginning on Page 439, of the NFPA Referenced Standards, make the following changes to the listed editions:

Delete	Add	Delete	Add
2-2011	<u>2-2016</u>	204-2007	<u>204-2012</u>
40-2010	<u>40-2013</u>	211-2010 3	211-2013 6
11-2010	<u>11-2016</u>	241-2009	<u>241-2013</u>
13-2010 3	13-2013 6	260-2009	<u>260-2013</u>
13D-2010 3	13D-2013 6	261-2009	<u>261-2013</u>
13R-2010 3	13R-2013 6	265-2011	<u>265-2015</u>
14-2010 3	14-2013 6	289-2009	<u>289-2013</u>
47-2009	<u>47-2013</u>	303-2011	<u>303-2016</u>
47A-2009	<u>47A-2013</u>	318-2009 12	318-2012 15
20-2010 3	20-2013 6	326-2010	<u>326-2015</u>
22-2008	<u>22-2013</u>	385-2007	<u>385-2012</u>
24-2010 3	24-2013 6	400-2013	<u>400-2016</u>
30-2012	<u>30-2015</u>	409-2010 1	409-2014 6
31-2011	<u>31-2016</u>	410-2010	<u>410-2015</u>
32-2011	<u>32-2016</u>	495-2010	<u>495-2013</u>
35-2011	<u>35-2016</u>	498-2010	<u>498-2013</u>
40-2011	<u>40-2016</u>	505-2010	<u>505-2013</u>

Delete	Add
51-2007	51-2013
51A-2011	51A-2012
52-2010	52-2013
55-2010 ³	55-2013 ⁶
56-2012	56-2014
59A-2009 ¹³	59A-2013 ⁶
61-2008	61-2013
72-2010 ³	72-2013 ⁶
80-2010 ³	80-2013 ⁶
99-2010	99-2012
105-2010 ³	105-2013 ⁶
110-2010 ³	110-2013 ⁶
111-2010 ³	111-2013 ⁶
160-2011	160-2016
170-2009 ¹²	170-2012 ⁵

Delete	Add
654-2011	654-2013
701-2010	701-2015
720-2005	720-2012
750-2014	750-2015
914-2010	914-2015
1122-2008	1122-2013
1124-2012	1124-2013
1126-2011	1126-2016
1127-2008	1127-2013
2001-2011	2001-2013

~~(3-20-14)~~()

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

18.01.54 - RULE TO IMPLEMENT THE NAIC MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS MODEL ACT

DOCKET NO. 18-0154-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 41-211 and 41-4409, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The existing rule is proposed to be amended to require all Medicare Supplement (aka Medigap) carriers to offer coverage to pre-65 Medicare eligible individuals; clarify the requirement to account for interest in projections; require experience and rate increases to be pooled among all plans offered by a company; and clarify rating/underwriting factors that can be used and when (e.g. smoking and pre-65).

Twenty-five states now require insurance companies to sell Medigap to all ages enrolled in Part B. Under age 65 Medicare beneficiaries have limited options for payment of Medicare deductible and co-payments. We seek to expand Medicare beneficiaries' options.

The NAIC Medicare Supplement Guidance Manual states: "Interest must be considered in calculating the anticipated lifetime and future loss ratios, otherwise loss ratios will be overstated." Yet, carriers have not included interest because our rule does not state it is required.

In reviewing rate increases, the department has requested that rate increases be applied equally to all of a carrier's plans, rather than varying the increases based on the more variable experience of specific plans. This keeps the premiums more representative of the benefit differences, rather than reflecting the morbidity of the enrollees of specific plans. The proposed changes will require that approach for future rate increases.

Current rule disallows gender and geographic area as rating factors, but other factors are not clearly allowed/disallowed during open enrollment or outside of open enrollment, other than disallowing broad terms of "health status, claims experience, receipt of health care, or medical condition."

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Volume 16-7, page 73](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this proposed rule, contact Thomas A. Donovan at (208) 334-4214, or at tom.donovan@doi.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the attention of the undersigned and must be delivered either by hard copy or via email to the same email address for questions set forth above on or before Wednesday, September 28, 2016.

DATED this 5th Day of August, 2016.

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83702-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0154-1601
(Only Those Sections With Amendments Are Shown.)

026. OPEN ENROLLMENT.

01. Offer of Coverage. ()

a. An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six (6) month period beginning with: ()

i. ~~The first day of the first month in which an individual is both sixty-five (65) years of age or older and is enrolled for benefits under Medicare Part B.~~ ()

ii. January 1, 2018 or the first day of the first month of Medicare Part B eligibility due to disability or end stage renal disease, whichever is later, for an individual that is both under sixty-five (65) years of age and enrolled for benefits under Medicare Part B; or ()

iii. The first day of the first month after the individual receives written notice of retroactive enrollment under Medicare Part B due to a retroactive eligibility decision made by the Social Security Administration. ()

b. Each Medicare supplement policy and certificate currently available from an issuer shall be made available to all applicants who qualify under ~~this Subsection~~ Paragraph 026.01.a. without regard to age. (3-29-10)()

02. Treatment of Preexisting Conditions. ()

a. If an applicant qualifies under Subsection 026.01 and submits an application during the time period referenced in Subsection 026.01 and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the issuer shall not exclude benefits based on a preexisting condition. (3-29-10)

b. If the applicant qualifies under Subsection 026.01 and submits an application during the time period referenced in Subsection 026.01 and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the issuer shall reduce the period of any preexisting condition exclusion by

the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary of Health and Human Services shall specify the manner of the reduction under this Subsection. (3-29-10)

c. Except as provided in ~~Subsection Paragraphs 026.012.a. and b.~~ and Sections 027 and 038, ~~Subsection 026.01~~ nothing in this rule shall ~~not~~ be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective. (3-29-10)()

03. Discrimination in Pricing. An issuer shall not discriminate in the pricing of a Medicare supplement policy or certificate issued pursuant to Subsection 026.01, except on the basis of the following criteria: ()

a. Issue age; and ()

b. Smoking or tobacco use. ()

027. GUARANTEED ISSUE FOR ELIGIBLE PERSONS.

01. Guaranteed Issue. (4-5-00)

a. Eligible persons are those individuals described in Subsection 027.02 who seek to enroll under the policy during the period specified in Subsection 027.03, and who submit evidence of the date of termination or disenrollment or Medicare Part D enrollment with the application for a Medicare supplement policy. (3-29-10)

b. With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in Subsection 027.05 that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy. (3-29-10)

02. Eligible Persons. An eligible person is an individual described here in any part of Subsection 027.02: (3-29-10)

a. The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefits plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual because the individual leaves the plan; (4-5-00)

b. The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under Part C of Medicare, and any of the following circumstances apply, or the individual is sixty-five (65) years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social Security Act, and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare Advantage plan: (4-11-06)

i. The certification of the organization or plan under this part has been terminated; (4-11-06)

ii. The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides; (4-11-06)

iii. The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary of Health and Human Services, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856), or the plan is terminated for all individuals within a residence

- area; (4-11-06)
- iv. The individual demonstrates, in accordance with guidelines established by the Secretary of Health and Human Services: (3-29-10)
- (a) That the organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or (3-29-10)
- (b) The organization, or agent, or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or (3-29-10)
- (c) The individual meets such other exceptional conditions as the Secretary may provide. (3-29-10)
- c.** The individual is enrolled with: (4-5-00)
- i. An eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost); (5-3-03)
- ii. A similar organization operating under demonstration project authority, effective for periods before April 1, 1999; (4-5-00)
- iii. An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or (5-3-03)
- iv. An organization under a Medicare Select policy; and (4-5-00)
- d.** The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under Paragraph 027.02.b. (3-29-10)
- e.** The individual is enrolled under a Medicare supplement policy and the enrollment ceases because: (4-5-00)
- i. Of the insolvency of the issuer or bankruptcy of the non-issuer organization; or (4-5-00)
- ii. Of other involuntary termination of coverage or enrollment under the policy; (4-5-00)
- iii. The issuer of the policy substantially violated a material provision of the policy; or (4-5-00)
- iv. The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual. (4-5-00)
- f.** The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under Part C of Medicare, any eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act, or a Medicare Select policy; and (4-11-06)
- g.** The subsequent enrollment under Paragraph 027.02.f. is terminated by the enrollee during any period within the first twelve (12) months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under Section 1851(e) of the federal Social Security Act); or (3-29-10)
- h.** The individual, upon first becoming eligible for benefits under Part A of Medicare at age sixty-five (65), enrolls in a Medicare Advantage plan under Part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, and disenrolls from the plan or program by not later than twelve (12) months after the effective date of enrollment. (4-11-06)

i. The individual enrolls in a Medicare Part D plan during the initial enrollment period and at the time of enrollment in Part D, was enrolled under Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in Paragraph 027.05.e. (3-29-10)

03. Guaranteed Issue Time Periods. (5-3-03)

a. In the case of an individual described in Paragraph 027.02.a., the guaranteed issue period begins on the later of the date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of a termination or cessation); or the date that the applicable coverage terminates or ceases; and ends sixty-three (63) days thereafter; (3-29-10)

b. In the case of an individual described in Paragraphs 027.02.b., 027.02.c., 027.02.f., or 027.02.h., whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three (63) days after the date the applicable coverage is terminated; (3-29-10)

c. In the case of an individual described in Paragraph 027.02.e., the guaranteed issue period begins on the earlier of: (3-29-10)

i. The date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any; and (5-3-03)

ii. The date that the applicable coverage is terminated, and ends on the date that is sixty-three (63) days after the date the coverage is terminated; (5-3-03)

d. In the case of an individual described in Paragraph 027.02.b. and Subparagraph 027.02.e.iii., and Subparagraph 027.02.e.iv., Paragraph 027.02.f., or 027.02.h., who disenrolls voluntarily, the guaranteed issue period begins on the date that is sixty (60) days before the effective date of the disenrollment and ends on the date that is sixty-three (63) days after the effective date; and (3-29-10)

e. In the case of an individual described in Paragraph 027.02.i., the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the sixty-day (60) period immediately preceding the initial Part D enrollment period and ends on the date that is sixty-three (63) days after the effective date of the individual's coverage under Medicare Part D; and (3-29-10)

f. In the case of an individual described in Subsection 027.02 but not described in the preceding provisions of Subsection 027.03, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is sixty-three (63) days after the effective date. (3-29-10)

04. Extended Medigap Access for Interrupted Trial Periods. (5-3-03)

a. In the case of an individual described in Paragraph 027.02.f. (or deemed to be so described, pursuant to this Paragraph) whose enrollment with an organization or provider described in Paragraph 027.02.f. is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in Paragraph 027.02.f.; (3-29-10)

b. In the case of an individual described in Paragraph 027.02.h. (or deemed to be so described, pursuant to this Paragraph) whose enrollment with a plan or in a program described in Paragraph 027.02.h. is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in Paragraph 027.02.h.; and (3-29-10)

c. For purposes of Paragraphs 027.02.f. and 027.02.h., no enrollment of an individual with an

organization or provider described in Paragraph 027.02.f. or with a plan or in a program described in Paragraph 027.02.h. may be deemed to be an initial enrollment under this Paragraph after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program. (3-29-10)

05. Products to Which Eligible Persons are Entitled. The Medicare supplement policy to which eligible persons are entitled under: (4-11-06)

a. Paragraphs 027.02.a. through 027.02.e. is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, or F (including F with a high deductible), K or L offered by any issuer. (3-29-10)

b. Subject to Paragraph 027.05.c., Paragraph 027.02.g. is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in Paragraph 027.05.a. (3-29-10)

c. After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy described in Subsection 027.05 is: (3-29-10)

i. The policy available from the same issuer but modified to remove outpatient prescription drug coverage; or (4-11-06)

ii. At the election of the policyholder, an A, B, C, F (including F with a high deductible), K or L policy that is offered by any issuer; (4-11-06)

d. Paragraph 027.02.h. shall include any Medicare supplement policy offered by any issuer. (3-29-10)

e. Paragraph 027.02.i. is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K, or L and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage. (3-29-10)

06. Notification Provisions. (4-5-00)

a. At the time of an event described in Subsection 027.02 of this rule because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this Section, and of the obligations of issuers of Medicare supplement policies under Subsection 027.01. Such notice shall be communicated contemporaneously with the notification of termination. (3-29-10)

b. At the time of an event described in Subsection 027.02 because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this Section, and of the obligations of issuers of Medicare supplement policies under Subsection 027.01. Such notice shall be communicated within ten (10) working days of the issuer receiving notification of disenrollment. (3-29-10)

07. Discrimination in Pricing. With respect to eligible persons, an issuer shall not discriminate in the pricing of a Medicare supplement policy or certificate issued pursuant to Subsection 027.01, except on the basis of the following criteria: ()

a. Issue age; and ()

b. Smoking or tobacco use. ()

(BREAK IN CONTINUITY OF SECTIONS)

029. LOSS RATIO STANDARDS AND REFUND OR CREDIT OF PREMIUM.

01. Loss Ratio Standards. (4-5-00)

a. A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificateholders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form. (4-5-00)

i. At least seventy-five percent (75%) of the aggregate amount of premiums earned in the case of group policies; or (4-5-00)

ii. At least sixty-five percent (65%) of the aggregate amount of premiums earned in the case of individual policies; (4-5-00)

b. Calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a managed care organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices. Incurred health care expenses where coverage is provided by a managed care organization shall not include: (4-11-06)

i. Home office and overhead costs; (4-11-06)

ii. Advertising costs; (4-11-06)

iii. Commissions and other acquisition costs; (4-11-06)

iv. Taxes; (4-11-06)

v. Capital costs; (4-11-06)

vi. Administrative costs; and (4-11-06)

vii. Claims processing costs. (4-11-06)

c. All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this Section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards. Demonstrations shall, at a minimum, account for: ~~(3-29-10)~~ ()

i. Lapse rates; ()

ii. Medical trend and rationale for trend; ()

iii. Assumptions regarding future premium rate revisions; and ()

iv. Interest rates for discounting and accumulating. ()

d. For purposes of applying Paragraphs 029.01.a. and 030.05.b., only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies. (3-29-10)

e. For policies issued prior to July 1, 1992, expected claims in relation to premiums shall meet: (4-5-00)

- i. The originally filed anticipated loss ratio when combined with the actual experience since inception; (4-5-00)
- ii. The appropriate loss ratio requirement from Subparagraphs 029.01.a.i. and 029.01.a.ii. when combined with actual experience beginning with July 1, 1992 to date; and (3-29-10)
- iii. The appropriate loss ratio requirement from Subparagraphs 029.01.a.i. and 029.01.a.ii. over the entire future period for which the rates are computed to provide coverage. (3-29-10)

02. Refund or Credit Calculation. (4-5-00)

a. An issuer shall collect and file with the director by May 31 of each year the data contained in the applicable reporting form as defined by NAIC Model Regulation (Attachments) and accessible by the Internet website at <http://www.doi.idaho.gov> for each type in a standard Medicare supplement benefit plan. (4-11-06)

b. If on the basis of the experience as reported the benchmark ratio since inception (ratio one (1)) exceeds the adjusted experience ratio since inception (ratio three (3)), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded. (4-5-00)

c. For the purpose of Section 029, policies or certificates issued prior to July 1, 1992, the issuer shall make the refund or credit calculation separately for all individual policies (including all group policies subject to an individual loss ratio standard when issued) combined and all other group policies combined for experience after July 1, 1992. The first report shall be due by May 31, 1994. (3-29-10)

d. A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credit exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for thirteen (13) week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based. (4-5-00)

03. Annual Filing of Premium Rates. An issuer of Medicare supplement policies and certificates issued before or after the effective date of July 1, 1992, in this state shall file annually its rates, rating schedule, and supporting documentation including ratios of incurred losses to earned premiums by policy duration for approval by the director in accordance with the filing requirements and procedures prescribed by the director. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years. As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the director, in accordance with the applicable filing procedures of this state: (4-5-00)

a. Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing. (4-5-00)

b. An issuer shall make premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date. (4-5-00)

c. If an issuer fails to make premium adjustments acceptable to the director, the director may order

premium adjustments, refunds, or premium credits deemed necessary to achieve the loss ratio required by Section 029. (3-29-10)

d. Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate. (4-5-00)

04. **Public Hearings.** The director may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after the effective date of July 1, 1992 if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in a manner deemed appropriate by the director. (4-5-00)

030. FILING AND APPROVAL OF POLICIES AND CERTIFICATES AND PREMIUM RATES.

01. **Filing of Policy Forms.** (3-29-10)

a. An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the director in accordance with filing requirements and procedures prescribed by the director. (3-29-10)

b. An issuer shall file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the director in the state in which the policy or certificate was issued. (3-29-10)

02. **Filing of Premium Rates.** (3-29-10)

a. An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the director in accordance with the filing requirements and procedures prescribed by the director. (3-29-10)

b. Except as provided in Subsection 029.03, the insured shall not receive more than one (1) rate increase in any twelve (12) month period. (3-29-10)

03. Except as provided in Paragraph 030.03.a., an issuer shall not file for approval more than one (1) form of a policy or certificate of each type for each standard Medicare supplement benefit plan. (3-29-10)

a. An issuer may offer, with the approval of the director, up to ~~four (4)~~ **three (3)** additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one (1) or each of the following cases: (4-5-00)()

i. The inclusion of new or innovative benefits; (4-5-00)

ii. The addition of either direct response or agent marketing methods; (4-5-00)

iii. The addition of either guaranteed issue or underwritten coverage; (4-5-00)

~~iv. The offering of coverage to individuals for Medicare by reason of disability. (4-5-00)~~

b. For the purposes of ~~Subsection 030.03~~, "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy. (3-29-10)()

04. **Availability of Policy Form or Certificate.** Except as provided in Paragraph 030.04.a., an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this rule. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has

actively offered it for sale in the previous twelve (12) months. (3-29-10)

a. An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the director in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of this notice by the director, the issuer shall no longer offer for sale the policy form or certificate form in this state. (4-5-00)

b. An issuer that discontinues the availability of a policy form or certificate form pursuant to Paragraph 030.04.a. shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the director of the discontinuance. The period of discontinuance may be reduced if the director determines that a shorter period is appropriate. (3-29-10)

c. The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of Subsection 030.04. (3-29-10)

d. A change in the rating structure or methodology shall be considered a discontinuance under this Subsection 030.04 unless the issuer complies with the following requirements: (3-29-10)

i. The issuer provides an actuarial memorandum, in a form and manner prescribed by the director, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates. (4-5-00)

ii. The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The director may approve a change to the differential which is in the public interest. (4-5-00)

05. Experience of Policy Forms. (4-5-00)

a. Except as provided in Paragraph 030.05.b., the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Section 029. (3-29-10)

b. Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation. (4-5-00)

c. The experience of all policy forms or certificate forms for standardized Medicare supplement benefit plans of the same type shall be combined for purposes of the rate change filing. Generally, any applicable percentage increase shall be filed and applied uniformly across all standardized plans within the same type, unless doing so would violate the federal lifetime loss ratio standards for specific forms within the same type. ()

06. Attained Age Rating Prohibited. With respect to Medicare supplement policies that conform to the Standard Benefit Plans developed by the National Association of Insurance Commissioners and adopted by the State of Idaho July 1, 1992, under IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act," sold to residents of this state and all those sold on or after January 1, 1995, it is an unfair practice and an unfair method of competition for any issuer, insurer, or licensee to use the increasing age of an insured, subscriber or participant as the basis for increasing premiums or prepayment charges for policyholders who initially purchase a policy after January 1, 1995. This rule explicitly authorizes both issue age ratings and community ratings consistent with the prohibition of attained age ratings and allows companies to resubmit for approval issue age ratings previously rejected. (3-29-10)

07. Rating by Area and Gender Prohibited. With respect to Medicare supplement policies that conform to the Standard Benefit Plans developed by the National Association of Insurance Commissioners and adopted by the State of Idaho, July 1, 1992, under IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act," sold to residents of this State and all those sold on or after January 1, 1999, it is an unfair practice and an unfair method of competition for any issuer, insurer, or licensee to use area or gender for rating purpose. (3-29-10)

08. Other Rating Requirements. With respect to Medicare supplement policies that conform to the Standard Benefit Plans under this rule, sold to residents of this State on or after January 1, 2018: ()

a. Any rate adjustments will be uniform between 1990 Standardized and 2010 Standardized plans throughout the lifetime of the policies, unless doing so would violate the federal lifetime loss ratio standards for specific forms within the same type. ()

b. No discount or underwriting factor of less than 1.0 will be available to policies issued outside of open enrollment, per Section 026, or guaranteed issue, per Section 027, unless the greatest discount or lowest underwriting factor is automatically applied to all policies issued under open enrollment and guaranteed issue. ()

c. For issue-ages sixty-five (65) and greater, the filed rate for any given age must not exceed the rate for any higher issue-age, similarly rated individual. ()

d. For issue-ages sixty-four (64) or less, the premium shall not exceed one hundred fifty percent (150%) of the premium for an issue-age sixty-five (65), similarly rated individual, while the individual's attained age is less than sixty-five (65). Upon attaining age sixty-five (65), a policyholder with an issue-age less than sixty-five (65) shall be charged the same premium rate as an issue-age sixty-five (65), similarly rated individual. ()

e. For any given age, the rating by the issuer shall not differentiate on the basis of the reason for eligibility for Medicare Part B. ()

IDAPA 19 - IDAHO STATE BOARD OF DENTISTRY
19.01.01 - RULES OF THE IDAHO STATE BOARD OF DENTISTRY
DOCKET NO. 19-0101-1601
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-912, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking will accomplish the following: Eliminate an incorporated document related to standards for patient records and instead include specific requirements in rule; clarify applicability of timeframe for acceptance of licensure examinations; clarify requirements for renewal of an active license; authorize a dental hygienist to administer nitrous oxide under general supervision; revise the unprofessional conduct rules regarding controlled substances to include any prescription drug; eliminate advertising rules and instead include in unprofessional conduct rules; add rule regarding minimum infection control and sterilization requirements; eliminate continuing education documentation requirement and require instead an attestation of completion; add rule requiring basic emergency drugs; clarify requirements for sedation permit renewal and reinstatement of an expired permit; and require dentists to obtain one hour of continuing education related to the prescription monitoring program. In addition to the listed issues, housekeeping and/or technical corrections have been identified for inclusion in the rulemaking.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016 Idaho Administrative Bulletin, [Vol. 16-6, page 47](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

The rulemaking does eliminate an incorporated document related to standards for patient records - The American Association of Dental Boards, the Dental Patient Record, June 12, 2009 – and instead includes specific requirements in Section 041 of the rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Susan Miller, Executive Director, at (208) 334-2369 or at susan.miller@isbd.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 27th Day of July, 2016.

Susan Miller, Executive Director
Idaho Board of Dentistry
350 N. 9th St., Ste. M100
P. O. Box 83720, Boise, ID 83720-0021

Phone: (208) 334-2369
Fax: (208) 334-3247
susan.miller@isbd.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 19-0101-1601
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE (RULE 4).

Pursuant to Section 67-5229, Idaho Code, this chapter incorporates by reference the following documents: (7-1-93)

01. Professional Standards. (3-29-12)

a. American Association of Oral and Maxillofacial Surgeons, Office Anesthesia Evaluation Manual, 8th Edition, 2012. (3-20-14)

b. American Dental Association, Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, October 2007. (4-7-11)

c. American Dental Association, Guidelines for the Use of Sedation and General Anesthesia by Dentists, October 2007. (4-7-11)

d. American Dental Association Policy Statement: The Use of Sedation and General Anesthesia by Dentists, October 2007. (4-7-11)

e. Centers for Disease Control and Prevention, DHHS, Guidelines for Infection Control in Dental Health-Care Settings, 2003. (4-6-05)

f. American Dental Association, Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code), January 2009. (4-7-11)

g. American Dental Hygienists' Association, Code of Ethics for Dental Hygienists (ADHA Code), June 2009. (4-7-11)

h. American Dental Hygienists' Association, Standards for Clinical Dental Hygiene Practice, March 10, 2008. (4-7-11)

~~**i.** American Association of Dental Boards, the Dental Patient Record, June 12, 2009. (4-7-11)~~

02. Availability. These documents are available for public review at the Idaho State Board of Dentistry, 350 North 9th Street, Suite M-100, Boise, Idaho 83720. (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

010. EXAMINATIONS (RULE 10).

Examinations may be completed solely by the Board or, at its discretion, the Board may participate in and accept an examining agent. Examination results will be valid for Idaho licensure by examination for a period of five (5) years from the date of successful completion of the examination. ~~(3-18-99)~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

014. EXAMINATION FOR GENERAL DENTAL LICENSES (RULE 14).

Pursuant to Section 54-918, Idaho Code, the Board shall conduct both written and clinical examinations of such duration and character and upon such subjects in dentistry as the Board shall determine to thoroughly test the fitness and ability of the applicant to practice dentistry in the state of Idaho. The Board may accept as meeting this

requirement successful completion of an examination administered by the Board or its agent, and completion of supplementary examinations as the Board deems necessary to determine the competency of the applicant for licensure. Any exam conducted by the Board may include: (7-1-93)

01. Written Examination. Evidence of passing the National Board examination may be required of all candidates applying for a license to practice dentistry. Any other written examination will be specified by the Board. (7-1-93)

02. Clinical Examination. All applicants for license to practice general dentistry shall be required to pass a Board-approved clinical examination, which includes a periodontal examination. (3-20-14)(____)

015. EXAMINATION FOR DENTAL HYGIENE LICENSES (RULE 15).

Pursuant to Section 54-918, Idaho Code, the Board shall conduct both written and clinical examinations, which shall be of such duration and character and upon such subjects in dental hygiene as the Board shall determine to thoroughly test the fitness and ability of the applicants to practice dental hygiene in the state of Idaho. The Board may accept as meeting this requirement successful completion of an examination administered by the Board or its agent, and completion of supplementary examinations as the Board deems necessary to determine the competency of the applicant for licensure. Any examination conducted by the Board may include: (7-1-93)

01. Written Examination. Evidence of passing the National Board examination may be required of all candidates applying for a dental hygiene license. Any other written examination will be specified by the Board. (7-1-93)

02. Clinical Examination. All applicants for license to practice dental hygiene shall be required to pass a Board-approved clinical dental hygiene examination including and a clinical local anesthesia examination. (3-20-14)(____)

(BREAK IN CONTINUITY OF SECTIONS)

018. REQUIREMENT FOR CPR (RULE 18).

Applicants for initial ~~or renewal~~ licensure as a dentist, dental specialist, or dental hygienist shall provide written verification of current cardiopulmonary resuscitation (CPR) certification as a requirement for licensure. All practicing dentists, dental specialists, or dental hygienists must maintain current CPR certification. (4-2-03)(____)

(BREAK IN CONTINUITY OF SECTIONS)

030. DENTAL HYGIENISTS - PRACTICE (RULE 30).

Subject to the provisions of the Dental Practice Act, Chapter 9, Title 54, Idaho Code, dental hygienists are hereby authorized to perform the activities specified below: (4-6-05)

01. General Supervision. A dental hygienist may perform specified duties under general supervision as follows: (4-6-05)

a. Oral prophylaxis (removal of stains and plaque biofilm and if present, supragingival and/or subgingival calculus); (3-20-14)

b. Medical history assessments and intra-oral and extra-oral assessments (including charting of the oral cavity and surrounding structures, taking case histories and periodontal assessment); (4-11-06)

c. Developing patient care plans for prophylaxis, non-surgical periodontal therapy and supportive and evaluative care in accordance with the treatment parameters set by supervising dentist; (4-11-06)

d. Root planing; (4-11-06)

- e. Non-surgical periodontal therapy; (4-11-06)
 - f. Closed subgingival curettage; (4-11-06)
 - g. Administration of local anesthesia; (4-6-05)
 - h. Removal of marginal overhangs (use of high speed handpieces or surgical instruments is prohibited); (4-6-05)
 - i. Application of topical antibiotics or antimicrobials (used in non-surgical periodontal therapy); (4-6-05)
 - j. Provide patient education and instruction in oral health education and preventive techniques; (3-20-14)
 - k. Placement of antibiotic treated materials pursuant to dentist authorization; ~~and (3-20-14)~~ ()
 - ~~l.~~ l. Administration and monitoring of nitrous oxide/oxygen; and ()
 - ~~m.~~ m. All duties which may be performed by a dental assistant. (3-20-14)
02. **Indirect Supervision.** A dental hygienist may perform specified duties under indirect supervision as follows: (4-6-05)
- ~~a.~~ a. Administration and monitoring of nitrous oxide/oxygen; (4-7-11)
 - ~~ba.~~ ba. All dental hygienist duties specified under general supervision; and (4-6-05)
 - ~~eb.~~ eb. Such other duties as approved by the Board. (4-11-06)
03. **Direct Supervision.** A dental hygienist may perform specified duties under direct supervision as follows: (4-6-05)
- a. Use of a laser restricted to gingival curettage and bleaching; (4-6-05)
 - b. All dental hygienist duties specified under general and indirect supervision; and (4-6-05)
 - c. Such other duties as approved by the Board. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

035. DENTAL ASSISTANTS - PRACTICE (RULE 35).

01. **Direct Supervision.** A dental assistant may perform specified activities under direct supervision as follows: (4-6-05)
- a. Recording the oral cavity (existing restorations, missing and decayed teeth); (4-6-05)
 - b. Placement of topical anesthetic agents (prior to administration of a local anesthetic by a dentist or dental hygienist); (4-6-05)
 - c. Removal of excess bonding material from temporary and permanent restorations and orthodontic appliances (using hand instruments or contra-angle handpieces with disks or polishing wheels only); (4-6-05)

- d. Expose and process radiographs; (4-6-05)
 - e. Make impressions for preparation of diagnostic models, bleach trays, fabrication of night guards, temporary appliances, temporary crowns or bridges; (3-20-14)
 - f. Record diagnostic bite registration; (4-6-05)
 - g. Record bite registration for fabrication of restorations; (4-6-05)
 - h. Provide patient education and instruction in oral hygiene and preventive services; (4-6-05)
 - i. Placement of cotton pellets and temporary restorative materials into endodontic access openings; (4-6-05)
 - j. Placement and removal of arch wire; (4-6-05)
 - k. Placement and removal of orthodontic separators; (4-6-05)
 - l. Placement and removal of ligature ties; (4-6-05)
 - m. Cutting arch wires; (4-6-05)
 - n. Removal of loose orthodontic brackets and bands to provide palliative treatment; (4-6-05)
 - o. Adjust arch wires; (4-6-05)
 - p. Etching of teeth prior to placement of restorative materials; (4-6-05)
 - q. Etching of enamel prior to placement of orthodontic brackets or appliances by a Dentist; (4-6-05)
 - r. Placement and removal of rubber dam; (4-6-05)
 - s. Placement and removal of matrices; (4-6-05)
 - t. Placement and removal of periodontal pack; (4-6-05)
 - u. Removal of sutures; (4-6-05)
 - v. Application of cavity liners and bases; (4-6-05)
 - w. Placement and removal of gingival retraction cord; and (3-20-14)
 - x. Application of topical fluoride agents. (3-20-14)
- 02. Prohibited Duties.** Subject to other applicable provisions of these rules and of the Act, dental assistants are hereby prohibited from performing any of the activities specified below: (7-1-93)
- a. Definitive diagnosis and treatment planning. (4-6-05)
 - b. The intraoral placement or carving of permanent restorative materials. (3-20-14)
 - c. Any irreversible procedure using lasers. (3-20-14)
 - d. The administration of any general or local injectable anesthetic. (3-20-14)
 - e. Any oral prophylaxis (removal of stains and plaque biofilm and if present, supragingival and/or subgingival calculus). (3-20-14)

- f. Use of an air polisher. (3-20-14)
- g. Any intra-oral procedure using a high-speed handpiece, except to the extent authorized by a Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity. (4-6-05)
- h. The following expanded functions, unless authorized by a Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity and performed under direct supervision: (4-6-05)
 - i. Fabrication and placement of temporary crowns; (4-6-05)
 - ii. Perform the mechanical polishing of restorations; (7-1-93)
 - iii. Initiating, regulating and monitoring the administration of nitrous oxide/oxygen to a patient; (4-7-11)
 - iv. Application of pit and fissure sealants; (7-1-93)
 - v. Coronal polishing (removal of plaque biofilm and stains from the teeth using an abrasive agent with a rubber cup or brush). (3-20-14)
 - vi. Use of a high-speed handpiece only for the removal of orthodontic cement or resin. (3-20-14)

03. Expanded Functions Qualifications. A dental assistant may be considered Board qualified in expanded functions, authorizing the assistant to perform any or all of the expanded functions described in Subsection 035.02.g~~h~~, upon satisfactory completion of the following requirements: ~~(4-6-05)~~()

a. Completion of Board-approved training in each of the expanded functions with verification of completion of the training to be provided to the Board upon request by means of a Certificate of Registration or other certificate evidencing completion of approved training. The required training shall include adequate training in the fundamentals of dental assisting, which may be evidenced by: (4-6-05)

- i. Current certification by the Dental Assisting National Board; or (7-1-93)
- ii. Successful completion of Board-approved curriculum in the fundamentals of dental assisting; or (3-29-12)
- iii. Successfully challenging the fundamentals course. (7-1-93)

b. Successful completion of a Board-approved competency examination in each of the expanded functions. There are no challenges for expanded functions. (3-18-99)

04. Curriculum Approval. Any school, college, institution, university or other teaching entity may apply to the Board to obtain approval of its course curriculum ~~in expanded functions~~. Before approving such curriculum, the Board may require satisfactory evidence of the content of the instruction, hours of instruction, content of examinations or faculty credentials. ~~(3-29-12)~~()

05. Other Credentials. Assistants, who have completed courses or study programs in expanded functions that have not been previously approved by the Board, may submit evidence of the extent and nature of the training completed, and, if in the opinion of the Board the same is at least equivalent to other Board-approved curriculum, and demonstrates the applicant's fitness and ability to perform the expanded functions, the Board may consider the assistant qualified to perform any expanded function(s). (3-29-12)

(BREAK IN CONTINUITY OF SECTIONS)

040. UNPROFESSIONAL CONDUCT (RULE 40).

A dentist or dental hygienist shall not engage in unprofessional conduct in the course of his practice. Unprofessional conduct by a person licensed under the provisions of Title 54, Chapter 9, Idaho Code, is defined as, but not limited to, one (1) of the following: (3-20-14)

01. Fraud. Obtaining fees by fraud or misrepresentation, or over-treatment either directly or through an insurance carrier. (7-1-93)

02. Unlicensed Practice. Employing directly or indirectly any suspended or unlicensed dentist or dental hygienist to practice dentistry or dental hygiene as defined in Title 54, Chapter 9, Idaho Code. (7-1-93)

03. Unlawful Practice. Aiding or abetting licensed persons to practice dental hygiene or dentistry unlawfully. (7-1-93)

04. Dividing Fees. A dentist shall not divide a fee for dental services with another party, who is not a partner or associate with him in the practice of dentistry, unless: (7-1-93)

a. The patient consents to employment of the other party after a full disclosure that a division of fees will be made; (7-1-93)

b. The division is made in proportion to the services performed and responsibility assumed by each dentist or party. (7-1-93)

05. ~~Controlled Substances~~ Prescription Drugs. Prescribing or administering ~~controlled substances~~ **prescription drugs** not reasonably necessary for, or within the scope of, providing dental services for a patient. In prescribing or administering ~~controlled substances~~ **prescription drugs**, a dentist shall exercise reasonable and ordinary care and diligence and exert his best judgment in the treatment of his patient as dentists in good standing in the state of Idaho, in the same general line of practice, ordinarily exercised in like cases. A dentist may not prescribe ~~controlled substances~~ **prescription drugs** for or administer controlled substances to himself. A dentist shall not use controlled substances as an inducement to secure or maintain dental patronage or aid in the maintenance of any person's drug addiction by selling, giving or prescribing ~~controlled substances~~ **prescription drugs**. (3-18-99)(____)

06. Harassment. The use of threats or harassment to delay or obstruct any person in providing evidence in any possible or actual disciplinary action, or other legal action; or the discharge of an employee primarily based on the employee's attempt to comply with the provisions of Title 54, Chapter 9, Idaho Code, or the Board's Rules, or to aid in such compliance. (7-1-93)

07. Discipline in Other States. Conduct himself in such manner as results in a suspension, revocation or other disciplinary proceedings with respect to his license in another state. (3-18-99)

08. Altering Records. Alter a patient's record with intent to deceive. (7-1-93)

09. Office Conditions. Unsanitary or unsafe office conditions, as determined by the customary practice and standards of the dental profession in the state of Idaho and current recommendations of the American Dental Association and the Centers for Disease Control as referred to in Section 004. (7-1-93)

10. Abandonment of Patients. Abandonment of patients by licensees before the completion of a phase of treatment, as such phase of treatment is contemplated by the customary practice and standards of the dental profession in the state of Idaho, without first advising the patient of such abandonment and of further treatment that is necessary. (7-1-93)

11. Use of Intoxicants. Practicing dentistry or dental hygiene while under the influence of an intoxicant or controlled substance where the same impairs the dentist's or hygienist's ability to practice dentistry or hygiene with reasonable and ordinary care. (7-1-93)

- 12. Mental or Physical Illness.** Continued practice of dentistry or dental hygiene in the case of inability of the licensee to practice with reasonable and ordinary care by reason of one (1) or more of the following: (7-1-93)
- a.** Mental illness; (7-1-93)
 - b.** Physical illness, including but not limited to, deterioration through the aging process, or loss of motor skill. (7-1-93)
- 13. Consent.** Revealing personally identifiable facts, data or information obtained in a professional capacity without prior consent of the patient, except as authorized or required by law. (3-18-99)
- 14. Scope of Practice.** Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities that the licensee knows or has reason to know that he or she is not competent to perform. (3-18-99)
- 15. Delegating Duties.** Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or with the exercise of reasonable care and control should know, that such a person is not qualified by training or by licensure to perform them. (3-18-99)
- 16. Unauthorized Treatment.** Performing professional services that have not been authorized by the patient or his legal representative. (3-18-99)
- 17. Supervision.** Failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of a licensed professional. (7-1-93)
- 18. Legal Compliance.** Failure to comply with any provisions of federal, state or local laws, statutes, rules, and regulations governing or affecting the practice of dentistry or dental hygiene. (3-29-12)
- 19. Exploiting Patients.** Exercising undue influence on a patient in such manner as to exploit a patient for the financial or personal gain of a practitioner or of a third party. (7-1-93)
- 20. Misrepresentation.** Willful misrepresentation of the benefits or effectiveness of dental services. (7-1-93)
- 21. Disclosure.** Failure to advise patients or their representatives in understandable terms of the treatment to be rendered, alternatives, and disclosure of reasonably anticipated fees relative to the treatment proposed. (3-18-99)
- 22. Sexual Misconduct.** Making suggestive, sexual or improper advances toward a patient or committing any lewd or lascivious act upon or with a patient. (7-1-93)
- 23. Patient Management.** Use of unreasonable and/or damaging force to manage patients, including but not limited to hitting, slapping or physical restraints. (7-1-93)
- 24. Compliance With Dentist Professional Standards.** Failure by a dentist to comply with professional standards applicable to the practice of dentistry, as incorporated by reference in this chapter. (3-29-12)
- 25. Compliance With Dental Hygienist Professional Standards.** Failure by a dental hygienist to comply with professional standards applicable to the practice of dental hygiene, as incorporated by reference in this chapter. (3-29-12)
- 26. Failure to Provide Records to a Patient or Patient's Legal Guardian.** Refusal or failure to provide a patient or patient's legal guardian legible copies of dental records. Failure to provide a patient or patient's legal guardian with records under Subsection 040.26 within five (5) business days shall be considered unprofessional conduct. A patient or patient's legal guardian may not be denied a copy of his records for any reason, regardless of whether the person has paid for the dental services rendered. A person may be charged for the actual cost of providing

the records but in no circumstances may a person be charged an additional processing or handling fee or any charge in addition to the actual cost. (3-20-14)

27. Failure to Cooperate With Authorities. Failure to cooperate with authorities in the investigation of any alleged misconduct or interfering with a Board investigation by willful misrepresentation of facts, willful failure to provide information upon request of the Board, or the use of threats or harassment against any patient or witness to prevent them from providing evidence. (3-20-14)

28. Advertising. Advertise in a way that is false, deceptive, misleading or not readily subject to verification. ()

041. PATIENT RECORDS (RULE 41).

01. Individual Records. Each licensee shall have prepared and maintained an accurate record for each person receiving dental services, regardless of whether any fee is charged. The record shall contain the name of the licensee rendering the service and include: ()

a. Name and address of patient and, if a minor, name of guardian; ()

b. Date and description of examination and diagnosis; ()

c. An entry that informed consent has been obtained and the date the informed consent was obtained. Documentation may be in the form of an acronym such as "PARQ" (Procedure, Alternatives, Risks and Questions) or "SOAP" (Subjective Objective Assessment Plan) or their equivalent. ()

d. Date and description of treatment or services rendered; ()

e. Date and description of treatment complications; ()

f. Date and description of all radiographs, study models, and periodontal charting; ()

g. Health history; and ()

h. Date, name of, quantity of, and strength of all drugs dispensed, administered, or prescribed. ()

02. Charges and Payments. Each dentist shall have prepared and maintained an accurate record of all charges and payments for services including source of payments. ()

03. Record Retention. Each dentist shall maintain patient records and radiographs as long as practicable, but in no event less than seven (7) years from the date of last entry unless: ()

a. The patient requests the records, radiographs, and models be transferred to another dentist who shall maintain the records and radiographs. ()

b. The dentist gives the records, radiographs, or models to the patient; or ()

c. The dentist transfers the dentist's practice to another dentist who shall maintain the records and radiographs. ()

042. INFECTION CONTROL (RULE 42).

In determining what constitutes unacceptable patient care with respect to infection control, the Board may consider current infection control guidelines such as those of the Centers for Disease Control and Prevention and the American Dental Association. Additionally, licensees must comply with the following requirements: ()

01. Gloves. Disposable gloves shall be worn whenever placing fingers into the mouth of a patient or when handling blood or saliva contaminated instruments or equipment. Appropriate hand hygiene shall be performed prior to gloving. ()

02. **Masks and Eyewear.** Masks and protective eyewear or chin-length shields shall be worn by licensees and other dental care workers when spattering of blood or other body fluids is likely. ()

03. **Instrument Sterilization.** Between each patient use, instruments or other equipment that come in contact with body fluids shall be sterilized. ()

04. **Sterilizing Devices Testing.** Heat sterilizing devices shall be tested for proper function by means of a biological monitoring system that indicates micro-organisms kill each calendar week in which scheduled patients are treated. Testing results shall be retained by the licensee for the current calendar year and the two (2) preceding calendar years. ()

05. **Non-Critical Surfaces.** Environmental surfaces that are contaminated by blood or saliva shall be disinfected with an EPA registered hospital disinfectant. ()

06. **Clinical Contact Surfaces.** Impervious backed paper, aluminum foil, or plastic wrap should be used to cover surfaces that may be contaminated by blood or saliva. The cover shall be replaced between patients. If barriers are not used, surfaces shall be cleaned and disinfected between patients by using an EPA registered hospital disinfectant. ()

07. **Disposal.** All contaminated wastes and sharps shall be disposed of according to any governmental requirements. ()

~~043.~~ -- 044. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

046. SPECIALTY ADVERTISING (RULE 46).

~~*Dentists and dental hygienists licensed to practice in Idaho may advertise in any medium or by other form of public communication so long as any such advertising is not false, deceptive, misleading or not readily subject to verification. A violation of this advertising rule shall constitute and be considered as unprofessional conduct pursuant to the Idaho Dental Practice Act and this chapter. (3-20-14)*~~

~~**01. General Advertising Provisions. (3-20-04)**~~

~~**a.** "Advertisement" shall mean any public communication, made in any form or manner whatsoever, about a licensee's professional services, fees or qualifications for the purpose of soliciting business. A licensee who engages or authorizes another person or entity to advertise for or on the licensee's behalf is responsible for the content of the advertisement unless the licensee can prove that the content of the advertisement was contrary to the licensee's specific directions. (3-20-14)~~

~~**b.** If the form or manner of advertising consists of or contains verbal communication to the public by television, radio, or other means, the advertisement shall be prerecorded and approved for broadcast by the licensee and a recording of the actual advertisement shall be retained by the licensee for a period of two (2) years. Upon receipt of a written request from the Board, a licensee shall provide any such recorded advertisement to the Board within five (5) working days. (3-20-04)~~

~~**e.** Any advertisement made under or by means of a fictitious or assumed business name shall be the responsibility of all licensees who are owners, members, partners or proprietors of the business entity. (3-20-14)~~

~~**02. Prohibited Advertising. A licensee shall not advertise in any form or manner which is false, misleading or deceptive to the public or which is not readily susceptible to verification. False, misleading or deceptive advertising or advertising that is not readily susceptible to verification includes, but is not limited to, advertising that: (3-20-04)**~~

- ~~a. Makes a material misrepresentation of fact or omits a material fact. (3-20-04)~~
- ~~b. Makes a representation that is false as to the credentials, education, or the licensing status of any licensee; (3-20-14)~~
- ~~c. Represents that the benefits of a dental insurance plan will be accepted as full payment when deductibles or copayments are required; (3-20-04)~~

~~03. **Specialty Advertising.** The Board recognizes and licenses the following specialty areas of dental practice: Dental Public Health; Endodontics; Oral and Maxillofacial Pathology; Oral and Maxillofacial Radiology; Oral and Maxillofacial Surgery; Orthodontics; Pediatric Dentistry; Periodontics; and Prosthodontics. The specialty advertising rules are intended to allow the public to be informed about recognized dental specialties and specialization competencies of licensees and to require appropriate disclosures to avoid misperceptions on the part of the public. (4-6-05)()~~

~~a01. **Recognized Specialty License.** An advertisement shall not state that a licensee is a specialist, or specializes in a recognized specialty area of dental practice, or limits his practice to any recognized specialty area of dental practice unless the licensee has been issued a license in that specialty area of dental practice by the Board. Use of words or terms in advertisements such as "Endodontist," "Pedodontist," "Pediatric Dentist," "Periodontist," "Prosthodontist," "Orthodontist," "Oral and Maxillofacial Pathologist," "Oral Pathologist," "Oral and Maxillofacial Radiologist," "Oral Radiologist," "Oral and Maxillofacial Surgeon," "Oral Surgeon," "Specialist," "Board Certified," "Diplomate," "Practice Limited To," and "Limited To Specialty Of" shall be prima facie evidence that the licensee is holding himself out to the public as a licensed specialist in a specialty area of dental practice. (3-20-14)()~~

~~b02. **Disclaimer.** A licensee who has not been licensed by the Board in a recognized specialty area of dental practice may advertise as being qualified in a recognized specialty area of dental practice so long as each such advertisement, regardless of form, contains a prominent, clearly worded disclaimer that the licensee is "licensed as a general dentist" or that the specialty services "will be provided by a general dentist." Any disclaimer in a written advertisement shall be in the same font style and size as that in the listing of the specialty area. (3-20-14)()~~

~~e03. **Unrecognized Specialty.** A licensee shall not advertise as being a specialist in or as specializing in any area of dental practice which is not a Board recognized and licensed specialty area unless the advertisement, regardless of form, contains a prominent, clearly worded disclaimer that the advertised area of dental practice is not recognized as a specialty area of dental practice by the Idaho Board of Dentistry. Any disclaimer in a written advertisement shall be in the same font style and size as that in the listing of the specialty area. (3-20-14)()~~

(BREAK IN CONTINUITY OF SECTIONS)

050. CONTINUING EDUCATION FOR DENTISTS (RULE 50).

~~Effective October 1994, r~~Renewal of any active dental license will require evidence of completion of continuing education or volunteer dental practice that meets the following requirements: (4-6-05)()

~~01. **Requirements:** (3-18-99)~~

~~a. All active dentists must hold a current CPR card. (7-1-93)~~

~~b01. **Number of Credits.** All active dentists shall acquire thirty (30) credits of verifiable continuing education in each biennial renewal period. One (1) credit is defined as one (1) hour of instruction. One (1) of the credits must be related to use of the Idaho Prescription Monitoring Program (PMP). (3-29-12)()~~

~~e02. **Nature of Education.** Continuing education must be oral health/health-related for the professional development of a dentist. (3-20-14)()~~

~~a03. **Volunteer Practice.** A dentist holding an active status license issued by the Board shall be allowed~~

one (1) credit of continuing education for every two (2) hours of verified volunteer dental practice performed during the biennial renewal period up to a maximum of ten (10) credits. (3-30-07)()

04. Attestation. Attestation to completion of continuing education hours shall be provided to the Board in conjunction with the license renewal application. ()

e05. Prorated Credits. Any person who becomes licensed as an active dentist during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of continuing education credits as specified by the Board. (3-30-07)()

~~**02. Documentation. In conjunction with license renewal, the dentist shall provide a list of continuing education credits obtained and verification of hours of volunteer dental practice performed and certify that the minimum requirements were completed in the biennial renewal period. (3-30-07)**~~

051. CONTINUING EDUCATION FOR DENTAL HYGIENISTS (RULE 51).

~~Effective April 1994, r~~Renewal of any active dental hygiene license or dental hygiene license endorsement will require evidence of completion of continuing education or volunteer dental hygiene practice that meets the following requirements. (4-6-05)()

01. Requirements for Renewal of an Active Status Dental Hygiene License: (4-6-05)

~~**a. All active dental hygienists must hold a current CPR card. (6-2-92)**~~

ba. All active dental hygienists shall acquire twenty-four (24) credits of verifiable continuing education in each biennial renewal period. One (1) credit is defined as one (1) hour of instruction. (3-29-12)

eb. Continuing education must be oral health/health-related education for the professional development of a dental hygienist. (3-20-14)

ec. A dental hygienist holding an active status license issued by the Board shall be allowed one (1) credit of continuing education for every two (2) hours of verified volunteer dental hygiene practice performed during the biennial renewal period up to a maximum of ten (10) credits. (3-30-07)

d. Attestation to completion of continuing education hours shall be provided to the Board in conjunction with the license renewal application. ()

e. Any person who becomes licensed as an active dental hygienist during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of continuing education credits as specified by the Board. (3-30-07)

02. Requirements for Renewal of an Extended Access Dental Hygiene License Endorsement. In addition to any other continuing education requirements for renewal of a dental hygiene license, a person granted an extended access dental hygiene license endorsement shall complete four (4) credits of verifiable continuing education in each biennial renewal period in the specific practice areas of medical emergencies, local anesthesia, oral pathology, care and treatment of geriatric, medically compromised or disabled patients and treatment of children. Any person who is issued an extended access dental hygiene license endorsement during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of those continuing education credits required under this section as specified by the Board. (3-20-14)

~~**03. Documentation. In conjunction with license and endorsement renewal, the dental hygienist shall provide a list of continuing education credits obtained and verification of hours of volunteer dental hygiene practice performed and certify that the minimum requirements were completed in the biennial renewal period. (3-30-07)**~~

(BREAK IN CONTINUITY OF SECTIONS)

055. MINIMAL SEDATION (RULE 55).

Persons licensed to practice dentistry in accordance with the Idaho Dental Practice Act and these rules are not required to obtain a permit to administer minimal sedation to patients of sixteen (16) years of age or older. ~~In cases where the patient weighs less than one hundred (100) pounds, or is under the age of sixteen (16) years, minimal sedation may be administered without a permit by use of nitrous oxide, or with a single enteral dose of a sedative agent administered in the dental office.~~ When the intent is minimal sedation, the appropriate initial dosing of a single enteral drug is no more than the maximum recommended dose (MRD) of a drug that can be prescribed for unmonitored home use. In cases where the patient weighs less than one hundred (100) pounds, or is under the age of sixteen (16) years, minimal sedation may be administered without a permit by use of nitrous oxide, or with a single enteral dose of a sedative agent administered in the dental office. (3-20-14)()

01. Patient Safety. The administration of minimal sedation is permissible so long as it does not produce an alteration of the state of consciousness in a patient to the level of moderate sedation, deep sedation or general anesthesia. A dentist must first qualify for and obtain the appropriate permit from the Board of Dentistry to be authorized to sedate patients to the level of moderate sedation, deep sedation or general anesthesia. Nitrous oxide/oxygen may be used in combination with a single enteral drug in minimal sedation, except as described in Section 055 of these rules. Notwithstanding any other provision in these rules, a dentist shall initiate and regulate the administration of nitrous oxide/oxygen when used in combination with minimal sedation. (3-20-14)

02. Personnel. At least one (1) additional person currently certified in Basic Life Support for Healthcare Providers must be present in addition to the dentist. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

058. EMERGENCY MEDICATIONS OR DRUGS (RULE 58).

01. Emergency Medications Or Drugs. The following emergency medications or drugs are required in all sites where anesthetic agents of any kind are administered: ()

- a. Anti-anaphylactic agent:** ()
- b. Antihistaminic:** ()
- c. Aspirin:** ()
- d. Bronchodilator:** ()
- e. Coronary artery vasodilator; and** ()
- f. Glucose.** ()

~~058.~~ **059. (RESERVED)**

060. MODERATE SEDATION (RULE 60).

Dentists licensed in the state of Idaho cannot administer moderate sedation in the practice of dentistry unless they have obtained the proper moderate sedation permit from the Idaho State Board of Dentistry. A moderate sedation permit may be either enteral or parenteral. A moderate enteral sedation permit authorizes dentists to administer moderate sedation by either enteral or combination inhalation-enteral routes of administration. A moderate parenteral sedation permit authorizes a dentist to administer moderate sedation by any route of administration. A dentist shall not administer moderate sedation to children under sixteen (16) years of age and one hundred (100) pounds unless they have qualified for and been issued a moderate parenteral sedation permit. (3-29-12)

01. Requirements for a Moderate Enteral Sedation Permit. To qualify for a moderate enteral sedation permit, a dentist applying for a permit shall provide proof that the dentist has completed training in the administration of moderate sedation to a level consistent with that prescribed in the American Dental Association's

“Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students,” as incorporated in Section 004 in these rules. The five (5) year requirement regarding the required training for a moderate enteral sedation permit shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the application date. To obtain a moderate enteral sedation permit, a dentist must provide verification of the following: (4-11-15)

a. Completion of an American Dental Association accredited or Board of Dentistry approved post-doctoral training program within five (5) years of the date of application for a moderate enteral sedation permit that included documented training of a minimum of twenty-four (24) hours of instruction plus management of at least ten (10) adult case experiences by the enteral and/or enteral-nitrous oxide/oxygen route. These ten (10) cases must include at least three live clinical dental experiences managed by participants in groups no larger than five (5). The remaining cases may include simulations and/or video presentations, but must include one experience in returning a patient from deep to moderate sedation; and (4-7-11)

b. Current certification in Advanced Cardiac Life Support. (4-11-15)

02. Requirements for a Moderate Parenteral Sedation Permit. To qualify for a moderate parenteral sedation permit, a dentist applying for a permit shall provide proof that the dentist has completed training in the administration of moderate parenteral sedation as prescribed in the American Dental Association’s “Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students,” as incorporated in Section 004 of these rules within the five (5) year period immediately prior to the date of application for a moderate parenteral sedation permit. The five (5) year requirement shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the date of application. The training program shall: (4-7-11)

a. Be sponsored by or affiliated with a dental school accredited by the Commission on Dental Accreditation of the American Dental Association or a teaching hospital or facility approved by the Board of Dentistry; and (4-5-00)

b. Consist of a minimum of sixty (60) hours of instruction, plus management of at least twenty (20) patients by the intravenous route; and (4-7-11)

c. Include the issuance of a certificate of successful completion that indicates the type, number of hours, and length of training received. (3-18-99)

d. In addition, the dentist must maintain current certification in Advanced Cardiac Life Support or Pediatric Advanced Life Support, whichever is appropriate for the patient being sedated. (4-11-15)()

03. General Requirements for Moderate Enteral and Moderate Parenteral Sedation Permits. The qualified dentist is responsible for the sedative management, adequacy of the facility and staff, diagnosis and treatment of emergencies related to the administration of moderate sedation and providing the equipment, drugs and protocol for patient rescue. Evaluators appointed by the Idaho State Board of Dentistry will periodically assess the adequacy of the facility and competence of the anesthesia team. The Board adopts the standards incorporated by reference in Section 004.01.c. and Section 004.01.d. of these rules as set forth by the American Dental Association. (4-11-15)

a. Facility, Equipment and Drug Requirements. The following facilities, equipment and drugs shall be available for immediate use during the sedation and recovery phase: (4-11-15)

i. An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two (2) individuals to freely move about the patient; (4-11-15)

ii. An operating table or chair that permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support; (4-11-15)

- iii. A lighting system that permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure; (4-11-15)
 - iv. Suction equipment that permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure; (4-11-15)
 - v. An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system; (4-11-15)
 - vi. A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room; (4-11-15)
 - vii. A sphygmomanometer, pulse oximeter, oral and nasopharyngeal airways, supraglottic airway devices, and automated external defibrillator (AED); and (4-11-15)
 - viii. Emergency drugs including, but not limited to, pharmacologic antagonists appropriate to the drugs used, bronchodilators, and antihistamines. (4-11-15)
 - ix. Additional emergency equipment and drugs required for moderate parenteral sedation permits include precordial/pretracheal stethoscope or end-tidal carbon dioxide monitor, intravenous fluid administration equipment, vasopressors, and anticonvulsants. ~~(4-11-15)~~()
- b.** Personnel. For moderate sedation, the minimum number of personnel shall be two (2) including: (4-7-11)
 - i. The operator; and (10-1-87)
 - ii. An assistant currently certified in Basic Life Support for Healthcare Providers. (4-7-11)
 - iii. Auxiliary personnel must have documented training in basic life support for healthcare providers, shall have specific assignments, and shall have current knowledge of the emergency cart inventory. The dentist and all office personnel must participate in documented periodic reviews of office emergency protocol, including simulated exercises, to assure proper equipment function and staff interaction. (4-11-15)
 - c.** Pre-sedation Requirements. Before inducing moderate sedation, a dentist shall: (4-11-15)
 - i. Evaluate the patient's medical history and document, using the American Society of Anesthesiologists Patient Physical Status Classifications, that the patient is an appropriate candidate for moderate sedation; (4-11-15)
 - ii. Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; (4-11-15)
 - iii. Obtain written informed consent from the patient or patient's guardian for the sedation; and (4-11-15)
 - iv. Maintain an anesthesia record, and enter the individual patient's sedation into a case/drug log. (4-11-15)
 - d.** Patient Monitoring. Patients shall be monitored as follows: (4-11-15)
 - i. Patients must ~~have~~ be continuously monitored using pulse oximetry. The patient's blood pressure, heart rate, and respiration shall be recorded every five (5) minutes during the sedation and then continued every fifteen (15) minutes until the patient meets the requirements for discharge. These recordings shall be documented in the patient record. The record must also include documentation of preoperative and postoperative vital

signs, all medications administered with dosages, time intervals and route of administration. If this information cannot be obtained, the reasons shall be documented in the patient's record. A patient under moderate sedation shall be continuously monitored; (4-11-15)()

ii. During the recovery phase, the patient must be monitored by an individual trained to monitor patients recovering from moderate sedation; (4-11-15)

iii. A dentist shall not release a patient who has undergone moderate sedation except to the care of a responsible third party; (4-11-15)

iv. The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met: vital signs are stable, patient is alert and oriented, and the patient can ambulate with minimal assistance; and (4-11-15)

v. A discharge entry shall be made by the dentist in the patient's record indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged. (4-11-15)

e. Sedation of Other Patients. The permit holder shall not initiate sedation on another patient until the previous patient is in a stable monitored condition and in the recovery phase following discontinuation of their sedation. (4-11-15)

f. Permit Renewal. Before the expiration date of a permit, the Board will, as a courtesy, mail notice for renewal of permit to the last mailing address on file in the Board's records. The licensee must return the completed renewal application along with the current renewal fees prior to the expiration of said permit. Failure to submit a renewal application and permit fee shall result in expiration of the permit and termination of the licensee's right to administer moderate sedation. Failure to submit a complete renewal application and permit fee within thirty (30) days of expiration of the permit shall result in cancellation of the permit. A licensee whose permit is canceled due to failure to renew within the prescribed time is subject to the provisions of Paragraph 060.03.g. of these rules. Renewal of the permit will be required every five (5) years. Proof of a minimum of twenty-five (25) credit hours continuing education in moderate sedation which may include training in medical/office emergencies will be required to renew a permit. A fee shall be assessed to cover administrative costs. In addition to the continuing education hours, a dentist must: (3-20-14)()

i. For a moderate enteral sedation permit, maintain current certification in basic life support for healthcare providers or advanced cardiac life support; (4-11-15)

ii. For a moderate parenteral sedation permit, maintain current certification in advanced cardiac life support. (3-20-14)

g. Reinstatement. A dentist may make application for the reinstatement of ~~an expired~~ a canceled or surrendered permit issued by the Board under this rule within five (5) years of the date of the permit's ~~expiration~~ cancellation or surrender. Applicants for reinstatement of a permit shall satisfy the facility and personnel requirements of this rule and shall be required to verify that they have obtained an average of five (5) credit hours of continuing education in moderate sedation for each year subsequent to the date upon which the permit ~~expired~~ was canceled or ~~was~~ surrendered. A fee for reinstatement shall be assessed to cover administrative costs. (4-7-11)()

061. GENERAL ANESTHESIA AND DEEP SEDATION (RULE 61).

Dentists licensed in the state of Idaho cannot use general anesthesia or deep sedation in the practice of dentistry unless they have obtained the proper permit from the Idaho State Board of Dentistry by conforming with the following conditions: (4-7-11)

01. Requirements for a General Anesthesia and Deep Sedation Permit. A dentist applying for a permit to administer general anesthesia or deep sedation shall provide proof that the dentist: (4-11-15)

a. Has completed an advanced education program accredited by the ADA Commission on Dental Accreditation that affords comprehensive and appropriate training necessary to administer and manage deep sedation or general anesthesia, commensurate with Part IV.C of the American Dental Association's "Guidelines for the Use of

Sedation and General Anesthesia by Dentists” within the five (5) year period immediately prior to the date of application for a permit. The five (5) year requirement shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the date of application; and (4-7-11)

b. Current Certification in Advanced Cardiac Life Support; ~~and~~ or Pediatric Advanced Life Support, whichever is appropriate for the patient being sedated. (4-11-15)()

~~**e.** Has an established protocol or admission to a recognized hospital. (3-18-99)~~

02. General Requirements for General Anesthesia and Deep Sedation Permits. The qualified dentist is responsible for the sedative management, adequacy of the facility and staff, diagnosis and treatment of emergencies related to the administration of general anesthesia or deep sedation and providing the equipment, drugs and protocol for patient rescue. Evaluators appointed by the Idaho State Board of Dentistry will periodically assess the adequacy of the facility and competence of the anesthesia team. The Board adopts the standards incorporated by reference in Section 004 of these rules, as set forth by the American Association of Oral and Maxillofacial Surgeons in their office anesthesia evaluation manual. (4-11-15)

a. Facility, Equipment and Drug Requirements. The following facilities, equipment and drugs shall be available for immediate use during the sedation and recovery phase: (4-11-15)

i. An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two (2) individuals to freely move about the patient; (4-11-15)

ii. An operating table or chair that permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support; (4-11-15)

iii. A lighting system that permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure; (4-11-15)

iv. Suction equipment that permits aspiration of the oral and pharyngeal cavities and a backup suction device that will function in the event of a general power failure; (4-11-15)

v. An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system; (4-11-15)

vi. A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room; (4-11-15)

vii. A sphygmomanometer, precordial/pretracheal stethoscope, end-tidal carbon dioxide monitor, pulse oximeter, oral and nasopharyngeal airways, supraglottic airway devices, intravenous fluid administration equipment, and automated external defibrillator (AED); and (4-11-15)

viii. Emergency drugs including, but not limited to, pharmacologic antagonists appropriate to the drugs used, vasopressors, bronchodilators, antihistamines, and anticonvulsants. (4-11-15)

b. Personnel. For general anesthesia or deep sedation, the minimum number of personnel shall be three (3) including: (4-7-11)

i. A qualified operator to direct the sedation; and (4-11-15)

ii. Two (2) additional individuals who have current certification in Basic Life Support for the Healthcare Provider. (4-7-11)

iii. When the same individual administering the deep sedation or general anesthesia is performing the dental procedure, one (1) of the additional appropriately trained team members must be designated for patient monitoring. (4-7-11)

c. Pre-sedation Requirements. Before inducing general anesthesia or deep sedation, a dentist shall: (4-11-15)

i. Evaluate the patient's medical history and document, using the American Society of Anesthesiologists Patient Physical Status Classifications, that the patient is an appropriate candidate for deep sedation; (4-11-15)

ii. Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; (4-11-15)

iii. Obtain written informed consent from the patient or patient's guardian for the sedation; and (4-11-15)

iv. Maintain an anesthesia record, and enter the individual patient's sedation into a case/drug log. (4-11-15)

d. Patient Monitoring. Patients shall be monitored as follows: (4-11-15)

i. Patients must ~~have~~ **be** continuously monitored using pulse oximetry and end-tidal carbon dioxide monitors. The patient's blood pressure, heart rate, and respiration shall be recorded every five (5) minutes during the sedation, and then continued every fifteen (15) minutes until the patient meets the requirements for discharge. These recordings shall be documented in the patient record. The record must also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration. If this information cannot be obtained, the reasons shall be documented in the patient's record. A patient under deep sedation or general anesthesia shall be continuously monitored; (4-11-15)

vi. During the recovery phase, the patient must be monitored by an individual trained to monitor patients recovering from general anesthesia and deep sedation; (4-11-15)

vii. A dentist shall not release a patient who has undergone general anesthesia, deep sedation or moderate sedation except to the care of a responsible third party; (4-11-15)

viii. The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met: vital signs are stable, patient is alert and oriented, and the patient can ambulate with minimal assistance; and (4-11-15)

ix. A discharge entry shall be made by the dentist in the patient's record indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged. (4-11-15)

e. Sedation of Other Patients. The permit holder shall not initiate sedation on another patient until the previous patient is in a stable monitored condition and in the recovery phase following discontinuation of their sedation. (4-11-15)

03. Moderate Sedation. A dentist holding a permit to administer general anesthesia or deep sedation under this rule may also administer moderate sedation. (4-7-11)

04. Permit Renewal. Before the expiration date of a permit, the Board will, as a courtesy, mail notice for renewal of permit to the last mailing address on file in the Board's records. The licensee must return the completed renewal application along with the current renewal fees prior to the expiration of said permit. Failure to submit a renewal application and permit fee shall result in expiration of the permit and termination of the licensee's right to administer moderate sedation. Failure to submit a complete renewal application and permit fee within thirty (30) days of expiration of the permit shall result in cancellation of the permit. A licensee whose permit is canceled

due to failure to renew within the prescribed time is subject to the provisions of Subsection 061.05 of these rules. Renewal of the permit will be required every five (5) years. Proof of a minimum of twenty-five (25) credit hours of continuing education in general anesthesia or deep sedation and proof of current certification in Advanced Life Support will be required to renew a permit. A fee shall be assessed to cover administrative costs. ~~(4-11-15)~~()

05. Reinstatement. A dentist may make application for the reinstatement of ~~an expired~~ a canceled or surrendered permit issued by the Board under this rule within five (5) years of the date of the permit's ~~expiration or cancellation or~~ surrender. Applicants for reinstatement of a permit shall satisfy the facility and personnel requirements of this rule and shall be required to verify that they have obtained an average of five (5) credit hours of continuing education in general anesthesia or deep sedation for each year subsequent to the date upon which the permit ~~expired~~ was canceled or ~~was~~ surrendered. A fee for reinstatement shall be assessed to cover administrative costs. ~~(4-7-11)~~()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.08.01- RULES OF THE STATE BOARD OF MORTICIANS

DOCKET NO. 24-0801-1601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 12, 2016.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 54-1106 and 54-1107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The 2016 Legislature passed House Bill 367 which extended the length of time a Resident Trainee could practice from two to three years under a permit. Rule 250 is being amended to reflect current law by changing the limit of time that a resident trainee can hold a permit from two (2) years to three (3) years.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The 2016 Legislature passed House Bill 367 which extended the length of time a Resident Trainee could practice from two to three years under a permit. The rule is being amended to comply with the new law.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is being amended to comply with the new law. This rule was discussed in a noticed, open meeting of the Board.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 2nd Day of August, 2016

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W. State Street

PO Box 83720
Boise, ID 83720-0063
Phone: (208) 334-3233 / Fax: (208) 334-3945

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 24-0801-1601
(Only Those Sections With Amendments Are Shown.)**

250. RESIDENT TRAINEE (RULE 250).

A Resident Trainee is a person who is licensed to train, under the direct and immediate supervision of a sponsoring mortician, to become a licensed mortician or funeral director. (4-7-11)

01. Training Requirements. (4-7-11)

a. Training requires the Resident Trainee's diligent attention to the subject matter in the course of regular and full-time paid employment. Full-time employment requires that the Resident Trainee be employed for at least thirty-six (36) hours per week for fifty (50) weeks per year within the mortuary where the Resident Trainee's sponsoring mortician is the practicing, resident mortician. (4-7-11)

i. At least three-fourths (3/4) of the Resident Trainee's training must consist of the sponsoring mortician instructing and demonstrating practices and procedures to increase the Resident Trainee's knowledge of the service performed by a mortician or a funeral director as defined in Chapter 11, Title 54, Idaho Code. (4-7-11)

ii. For the balance of the required hours, the sponsoring mortician, or his licensed appointee, must be immediately available to consult with the Resident Trainee. (4-7-11)

b. All training must occur within Idaho. (4-7-11)

c. A Resident Trainee shall not sign a death certificate. (4-7-11)

02. Sponsoring Mortician. A sponsoring mortician must: (4-7-11)

a. Be an Idaho-licensed mortician who practices as a full-time resident mortician in Idaho. (4-7-11)

b. Not serve as the sponsoring mortician for more than two (2) "Resident Trainees at any given time." (4-7-11)

c. Supervise and instruct the Resident Trainee, and provide demonstrations for and consultations to the Resident Trainee, as described in Subsection 250.01, of this rule. (4-7-11)

d. Complete and co-sign, with the Resident Trainee, quarterly and final reports. These reports must be completed on forms approved by the Board and document the information described in Subparagraphs 250.04.c. and 250.04.d., of this rule. The sponsoring mortician must promptly submit a report after the period of time covered by the report ends. For example, the sponsoring mortician must promptly submit the first quarter report after the first quarter ends, the second quarter report after the second quarter ends, etc. (4-7-11)

e. Promptly notify the Board in writing if a Resident Trainee's training is terminated, including termination due to interruption as specified in Subsection 250.05, of this rule and submit a final report documenting training up to the termination date. (4-7-11)

03. Eligibility to Be Licensed. A person may not be licensed as a "Resident Trainee" if the person has practiced as a Resident Trainee or apprentice for a total cumulative period of more than ~~two (2)~~ **three (3)** years in Idaho, unless approved by the Board for good cause. For purposes of accounting for total cumulative training as a Resident Trainee, the sponsoring mortician must notify the Bureau at the beginning and termination of the training period. When a Resident Trainee completes training, the Resident Trainee must complete the remaining qualifications for licensure as a mortician or funeral director within the following three (3) years or show good reason for further delay. ~~(4-7-11)~~ **(7-12-16)T**

- 04. Resident Trainee Applicants to Qualify.** (7-1-93)
- a.** An applicant for a Resident Trainee license must apply on Board-approved forms and pay the appropriate fee. The applicant must: (4-7-11)
- i. Be at least eighteen (18) years of age; (4-7-11)
 - ii. Be of good moral character; (4-7-11)
 - iii. Have graduated from an accredited high school or have received an equivalent education as determined by the standards set and established by the state board of education; (4-7-11)
 - iv. Provide a photo as specified in Section 200 of this rule; and (4-7-11)
 - v. Identify the sponsoring mortician and the funeral establishment in which the applicant will train. The applicant must promptly notify the Board in writing if this information changes during the training period. (4-7-11)
- b.** The effective date of the resident training shall be determined by the board at its next meeting. In no case shall it be prior to the date the application, together with the required fees, are received in the office of the Bureau. (4-11-06)
- c.** Resident Trainees pursuing a mortician license must complete and co-sign, with the sponsoring mortician, quarterly and final reports documenting that the applicant has assisted in embalming at least twenty-five (25) dead human bodies and assisted in making at least twenty-five (25) funeral arrangements and in conducting at least twenty-five (25) funerals under supervision. (4-7-11)
- d.** Resident Trainees pursuing a funeral director license must complete and co-sign, with the sponsoring mortician, quarterly and final reports documenting that the applicant has assisted in making at least twenty-five (25) funeral arrangements and in conducting at least twenty-five (25) funerals under supervision. (4-7-11)
- 05. Interruption in Training.** An interruption in training of sixty (60) days or more constitutes termination of training. (7-1-93)

IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION

26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK AND RECREATION AREAS AND FACILITIES

DOCKET NO. 26-0120-1601

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 67-4210, 67-4223, and 67-4249, Idaho Code.

MEETING SCHEDULE: A public meeting on the negotiated rulemaking will be held as follows:

Wednesday, September 21, 2016 - 6:00 pm to 7:00 pm

**Idaho Dept. of Parks and Recreation Headquarters
5657 Warm Springs Avenue
Boise, Idaho**

The meeting site(s) will be accessible to persons with disabilities, if needed. Requests for accommodation must be made not later than five (5) days prior to the meeting to the agency address below.

METHOD OF PARTICIPATION: Persons wishing to participate in the negotiated rulemaking must do the following:

1. Attend the scheduled Public Meeting on September 21, 2016 and provide verbal comment.
2. Provide written comment by September 21, 2016 by mailing to the P.O. Box address posted below.
3. Provide comment via telephone during the established time of the September 21, 2016 Public Meeting by calling: (208) 514-2259, and use Port 7414.

Upon conclusion of the negotiated rulemaking, any unresolved issues, all key issues considered, and conclusion reached during the negotiated rulemaking will be addressed in a written summary. The summary will be made available to interested persons who contact the agency or, if the agency chooses, the summary may be posted on the agency website.

DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

The Idaho Department of Parks and Recreation proposes changes to IDAPA 26, Title 1, Chapter 20 Section 010.05(a) to increase the maximum capacity of motorcycles permitted on Idaho State Park campsites from two (2) to four (4).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a preliminary draft copy of the rule text, contact Keith Hobbs, (208) 514-2450.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 21, 2016.

DATED this 19th Day of August, 2016.

Keith Hobbs, Operations Division Administrator
Idaho Department of Parks and Recreation
5657 Warm Springs Avenue
PO Box 83720, Boise, ID 83720-0065
Phone: (208) 514-2450 / Fax: (208) 334-5232

IDAPA 27 - BOARD OF PHARMACY
27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY
DOCKET NO. 27-0101-1601
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 37-2715, 37-2726(5) and 54-1717, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Wednesday, October 26, 2016 – 1:00 pm (MDT)

**Idaho State Capitol Building
Room WW53
514 West Jefferson
Boise, ID**

For those planning to attend the open, public hearing, written and verbal comments will be accepted by and/or presented before the Board. For all others not planning to attend the meeting, written comments will be accepted by the Executive Director on or before October 25, 2016 as follows:

- Written comments received by October 12, 2016 will be included in the Board's distributed meeting materials for consideration in advance of the meeting;
- Written comments received between October 13, 2016 and October 25, 2016 will be printed and provided to the Board at the open, public hearing.

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The 2016 Idaho Legislature passed several bills that necessitate conforming changes in Board rules. The specific bills are HB 338, HB 373, HB 374, HB 481, and SB 1322a. The rulemaking aims to update existing Board rules to conform to the newly passed legislation. Specifically, the rule updates will:

- Expand the venues at which emergency medication kits can be housed to include specialty infusion clinics.
- Allow Idaho's Regional Behavioral Health Clinics to donate and receive donated medications to dispense to medically indigent patients.
- Enable delegate access to the Prescription Monitoring Program.
- Exempt investigational drugs from the products that necessitate registration as a prescriber drug outlet.
- Allow prescription medications to be labeled in the name of an authorized entity.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016 Idaho Administrative Bulletin, [Vol. 16-6, pages 49-50](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alex Adams, Executive Director, at (208) 334-2356 or at alex.adams@bop.idaho.gov.

DATED this 5th Day of August, 2016

Alex Adams, Pharm D, MPH
Executive Director
Board of Pharmacy
1199 W. Shoreline Ln., Ste. 303
P. O. Box 83720
Boise, ID 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-1601
(Only Those Sections With Amendments Are Shown.)

011. DEFINITIONS AND ABBREVIATIONS (J -- R).

01. LTCF -- Long-Term Care Facility. An institutional facility that provides extended health care to resident patients. (3-21-12)

02. Mail Service Pharmacy. A nonresident pharmacy that ships, mails, or delivers by any lawful means a dispensed legend drug to residents in this state pursuant to a legally issued prescription drug order and ensures the provision of corresponding related pharmaceutical care services required by law. (7-1-13)

03. MPJE. Multistate Pharmacy Jurisprudence Exam. (3-21-12)

04. MTM -- Medication Therapy Management. A distinct service or group of services that optimize therapeutic outcomes for individual patients. MTM services are independent of, but can occur in conjunction with, the provision or administration of a drug or a device and encompass a broad range of activities and responsibilities. The MTM service model in pharmacy practice includes the following five core elements: (3-21-12)

a. Medication therapy review; (3-21-12)

b. Personal medication record; (3-21-12)

c. Medication-related action plan; (3-21-12)

d. Intervention or referral, or both; (3-21-12)

e. Documentation and follow-up. (3-21-12)

05. NABP. National Association of Boards of Pharmacy. (3-21-12)

- 06.** **NAPLEX.** North American Pharmacists Licensure Examination. (3-21-12)
- 07.** **NDC.** National Drug Code. (3-21-12)
- 08.** **Non-Institutional Pharmacy.** A pharmacy located in a drug outlet that is not an institutional facility. (3-21-12)
- 09.** **Outsourcing Drug Outlet.** A drug outlet that is registered by the United States Food and Drug Administration pursuant to 21 U.S.C. Section 353b and either registered or endorsed by the Board. (4-6-15)
- 10.** **Parenteral Admixture.** The preparation and labeling of sterile products intended for administration by injection. (3-21-12)
- 11.** **Pharmaceutical Care Services.** A broad range of pharmacist-provided cognitive services, activities and responsibilities intended to optimize drug-related therapeutic outcomes for patients. Pharmaceutical care services may be performed independent of, or concurrently with, the dispensing or administration of a drug or device and encompasses services provided by way of DTM under a collaborative practice agreement, pharmacotherapy, clinical pharmacy practice, pharmacist independent practice, and MTM. Except as permitted pursuant to a collaborative practice agreement, nothing in these rules allows a pharmacist, beyond what is statutorily allowed, to engage in the unlicensed practice of medicine or to diagnose, prescribe, or conduct physical examinations. Pharmaceutical care services are not limited to, but may include one (1) or more of the following, according to the individual needs of the patient: (4-4-13)
- a.** Performing or obtaining necessary assessments of the patient’s health status, including the performance of health screening activities that may include, but are not limited to, obtaining finger-stick blood samples; (3-21-12)
 - b.** Reviewing, analyzing, evaluating, formulating or providing a drug utilization plan; (3-21-12)
 - c.** Monitoring and evaluating the patient’s response to drug therapy, including safety and effectiveness; (3-21-12)
 - d.** Performing a comprehensive drug review to identify, resolve, and prevent drug-related problems, including adverse drug events; (3-21-12)
 - e.** Documenting the care delivered; (3-21-12)
 - f.** Communicating essential information or referring the patient when necessary or appropriate; (3-21-12)
 - g.** Providing counseling education, information, support services, and resources applicable to a drug, disease state, or a related condition or designed to enhance patient compliance with therapeutic regimens; (3-21-12)
 - h.** Conducting a drug therapy review consultation with the patient or caregiver; (3-21-12)
 - i.** Preparing or providing information as part of a personal health record; (3-21-12)
 - j.** Identifying processes to improve continuity of care and patient outcomes; (3-21-12)
 - k.** Providing consultative drug-related intervention and referral services; (3-21-12)
 - l.** Coordinating and integrating pharmaceutical care services within the broader health care management services being provided to the patient; (3-25-16)
 - m.** Ordering and interpreting laboratory tests; and (3-25-16)
 - n.** Other services as allowed by law. (3-21-12)

- 12. Pharmacist Extern.** A person enrolled in an accredited school or college of pharmacy who is pursuing a professional degree in pharmacy. (4-4-13)
- 13. Pharmacist Intern.** A person who has successfully completed a course of study at an accredited school or college of pharmacy, has received a professional degree in pharmacy, and is obtaining practical experience under the supervision of a pharmacist. (3-21-12)
- 14. Pharmacy Operations.** Activities related to and including the preparation, compounding, distributing, or dispensing of drugs or devices from a pharmacy. (3-21-12)
- 15. PHI -- Protected Health Information.** Individually identifiable health information that is: (3-21-12)
- a.** Transmitted by electronic media (as defined by the HIPAA Privacy Rule at 45 CFR 160.103); (3-21-12)
 - b.** Maintained in electronic media; and (3-21-12)
 - c.** Transmitted or maintained in any other form or medium. (3-21-12)
 - d.** PHI excludes individually identifiable health information in: (3-21-12)
 - i.** Education records covered by the Family Education Right and Privacy Act, as amended (20 U.S.C. Section 1232g); (3-21-12)
 - ii.** Records described at 20 U.S.C. Section 1232g(a)(4)(B)(iv); and (3-21-12)
 - iii.** Employment records held by a covered entity (as defined by the HIPAA Privacy Rule at 45 CFR 160.103) in its role as an employer. (3-21-12)
- 16. PIC.** Pharmacist-in-charge. (3-21-12)
- 17. PMP.** Prescription Monitoring Program. (3-21-12)
- 18. Prepackaging.** The act of transferring a drug, manually or using an automated system, from a manufacturer's original container to another container prior to receiving a prescription drug order. (3-21-12)
- 19. Prescriber.** An individual currently licensed, registered, or otherwise authorized to prescribe and administer drugs in the course of professional practice. (3-21-12)
- 20. Prescriber Drug Outlet.** A drug outlet in which prescription drugs or devices are dispensed directly to patients under the supervision of a prescriber, except where delivery is accomplished only through on-site administration or the provision of drug samples [or investigational drugs as permitted in Title 39, Chapter 93, Idaho Code.](#) ~~(3-21-12)~~()
- 21. Purple Book.** The list of licensed biological products with reference product exclusivity and biosimilarity or interchangeability evaluations published by the FDA under the Public Health Service Act. (4-11-15)
- 22. Readily Retrievable.** Records are considered readily retrievable if they are able to be completely and legibly produced upon request within seventy-two (72) hours. (3-21-12)
- 23. Reconstitution.** The process of adding a diluent to a powdered medication to prepare a solution or suspension, according to the product's labeling or the manufacturer's instructions. (3-25-16)
- 24. Relative Contraindication.** A condition that renders a particular treatment or procedure inadvisable, but not prohibitive. (3-21-12)

25. Remote Dispensing Site. A licensed pharmacy staffed by one or more certified technicians at which telepharmacy services are provided through a supervising pharmacy. (3-21-12)

26. Remote Office Location. A secured area that is restricted to authorized personnel, adequately protects private health information, and shares a secure common electronic file or a private, encrypted connection with a pharmacy, from which a pharmacist who is contracted or employed by a central drug outlet performs centralized pharmacy services. (7-1-13)

27. Retail Non-Pharmacy Drug Outlet. A retail outlet that sells non-prescription drugs or devices that is not a pharmacy. (3-21-12)

28. Retail Pharmacy. A community or other pharmacy that sells prescription drugs at retail and is open to the public for business. (3-21-12)

29. R.N. Registered nurse. (3-21-12)

(BREAK IN CONTINUITY OF SECTIONS)

140. STANDARD PRESCRIPTION DRUG LABELING.

Unless otherwise directed by these rules, a prescription drug must be dispensed in an appropriate container that bears the following information: (3-21-12)

01. Dispenser Information. The name, address, and telephone number of the dispenser (person or business). (3-21-12)

02. Serial Number. The serial number. (4-4-13)

03. Date. The date the prescription is filled. (3-21-12)

04. Prescriber. The name of the prescriber. (3-21-12)

05. Name. (4-11-15)

a. If a person, the name of the patient or other person authorized to possess a legend drug in accordance with Idaho Code; (4-11-15)()

b. If an animal, the name and species of the patient; or (4-11-15)

c. If a ~~school for epinephrine auto-injectors pursuant to Section 33-520A;~~ facility or other entity is authorized to possess a legend drug in accordance with Idaho Code, the name of the ~~school~~ facility or entity; (4-11-15)()

06. Drug Name and Strength. Unless otherwise directed by the prescriber, the name and strength of the drug (the generic name and its manufacturer's name or the brand name). (3-21-12)

07. Quantity. The quantity of item dispensed. (3-21-12)

08. Directions. The directions for use. (3-21-12)

09. Cautionary Information. Cautionary information as required or deemed appropriate for proper use and patient safety. (3-21-12)

10. Expiration. An expiration date that is the lesser of: (3-21-12)

- a. One (1) year from the date of dispensing; (3-21-12)
- b. The manufacturer's original expiration date; (3-21-12)
- c. The appropriate expiration date for a reconstituted suspension or beyond use date for a compounded product; or (3-21-12)
- d. A shorter period if warranted. (3-21-12)
- 11. **Refills.** The number of refills remaining, if any, or the last date through which the prescription is refillable. (4-11-15)
- 12. **Warning.** The warning: "Caution: State or federal law, or both, prohibits the transfer of this drug to any person other than the patient for whom it was prescribed," except when dispensing to an animal, when a warning sufficient to convey "for veterinary use only" may be utilized. (4-11-15)
- 13. **Identification.** The initials or other unique identifier of the dispensing pharmacist or dispensing prescriber. (4-11-15)

(BREAK IN CONTINUITY OF SECTIONS)

204. CONTROLLED SUBSTANCES: PMP.

Specified data on controlled substances must be reported ~~weekly, or more often as required~~ by the ~~Board,~~ end of the next business day by all ~~pharmacies holding a DEA retail pharmacy registration entities~~ that dispense controlled substances in or into Idaho and prescribers that dispense controlled substances to humans. Data on controlled substance prescription drug samples does not need to be reported. ~~(4-4-13)~~()

01. Online Access to PMP. Online access to the Board's PMP is limited to licensed prescribers and pharmacists, or their delegates, for treatment purposes. To obtain online access, a prescriber or pharmacist, or their delegate must: ~~(3-21-12)~~()

- a. Complete and submit a registration application and a written agreement to adhere to the access restrictions and limitations established by law; (3-21-12)
- b. Obtain Board approval for access; and (3-21-12)
- c. Be issued a user account, login name, and password. (3-21-12)

02. Use Outside Scope of Practice Prohibited. Information obtained from the PMP must not be used for purposes outside the prescriber's or pharmacist's scope of professional practice. A delegate may not access the PMP outside of their supervisor's scope of professional practice. ~~(3-21-12)~~()

03. Profile Requests. Authorized persons without online access may obtain a profile by completing the required form and submitting it to the Board office with proof of identification and other credentials required to confirm the requestor's authorized status pursuant to Section 37-2726, Idaho Code. (3-21-12)

04. Suspension, Revocation, or Restriction of PMP Access. Violation of this rule provides grounds for suspension, revocation, or restriction of the prescriber's, ~~or~~ pharmacist's, or delegate's authorization for online access to the PMP. ~~(3-21-12)~~()

(BREAK IN CONTINUITY OF SECTIONS)

265. LEGEND DRUG DONATION -- STANDARDS AND PROCEDURES.

01. Drug Donation Criteria. A drug considered for donation to a qualifying charitable clinic or center must meet the following eligibility criteria or it must not be accepted for donation. (3-21-12)

- a. The drug name, strength, lot number, and expiration date must appear on the package or label. (3-21-12)
- b. The drug must be FDA-approved and: (3-21-12)
 - i. Be in the original unit dose packaging; or (3-21-12)
 - ii. Be an oral or parenteral drug in a sealed, single dose container approved by the FDA; or (3-21-12)
 - iii. Be a topical or inhalant drug in a sealed, unit-of-use container approved by the FDA; or (3-21-12)
 - iv. Be a parenteral drug in a sealed, multiple dose container approved by the FDA from which no doses have been withdrawn. (3-21-12)

v. Be a patient assistant program drug, which must be originally received by the qualified donor, and remain under the control and storage of the donor. ()

c. The drug must not be the subject of a mandatory recall by a state or federal agency or of a voluntary recall by a drug wholesaler or manufacturer. (3-21-12)

d. The drug must not require storage temperatures other than normal room temperature as specified by the manufacturer or the USP. (3-21-12)

e. The drug must not be subject to an FDA-restricted drug distribution program such as and including, but not limited to, thalidomide and lenalidomide. (3-21-12)

02. Donation Standards. (3-21-12)

a. A pharmacist, physician, physician assistant, or an advanced practice professional nurse with prescriptive authority at the qualifying charitable clinic or center must be designated as responsible for defining the drugs included in the qualifying charitable clinic or center's formulary. (3-21-12)

b. ~~Donating nursing homes~~ A qualified donor may only donate drugs that appear on the formulary. ~~(3-21-12)~~()

c. Prior to the delivery of donated drugs to the qualifying charitable clinic or center, a pharmacist, nurse, physician, or physician assistant from the ~~donating nursing home~~ qualified donor must sign and date a manifest that: ~~(3-21-12)~~()

i. Attests that the donated drugs have been maintained in a secure and temperature-controlled environment that meets the drug manufacturers' recommendations and the USP standards; (3-21-12)

ii. Attests that the drugs have been continuously under the control of a healthcare professional and have never been in the custody of a patient or other individual; (3-21-12)

iii. Attests that the donated drugs are those qualified for donation by their inclusion in the qualifying charitable clinic or center's formulary; (3-21-12)

iv. Attests that the donation is fully compliant with these rules; (3-21-12)

v. Attests that all PHI has been removed or redacted from the package; (3-21-12)

vi. Lists the name of the ~~donating nursing home~~ qualified donor and the name of the receiving

qualifying charitable clinic or center; and ~~(3-21-12)~~()

vii. Lists the name, strength, expiration date, lot number, and quantity of each prescription drug donated. (3-21-12)

d. A copy of the manifest must be delivered to the qualifying charitable clinic or center with the donated drugs. (3-21-12)

03. Receipt and Handling of Donated Drugs. Donated drugs may be received and handled at a qualifying charitable clinic or center by a pharmacist, physician, physician assistant, advanced practice professional nurse with prescriptive authority, dentist, optometrist, or other authorized clinic or center personnel. (3-21-12)

04. Verification of Received Drugs. Qualified recipients must meet the following requirements, except in the instance in which a qualified recipient and a qualified donor are the same entity as permitted in Idaho Code: ~~(3-21-12)~~()

a. Each donated drug must be verified against the donation manifest by an individual authorized to receive the drugs. (3-21-12)

b. If all PHI has not been removed by the donating entity, the information must be removed or redacted prior to dispensing. (3-21-12)

c. Before donated drugs are placed with a qualifying charitable clinic or center's regular stock, a pharmacist, physician, physician assistant, or an advanced practice professional nurse with prescriptive authority must: (3-21-12)

i. Using a current drug identification book, a computer program, or an online service, verify that each donated drug unit meets the criteria specified by these rules; (3-21-12)

ii. Verify that the name and strength indicated on the label of each donated drug unit is correct; and (3-21-12)

iii. Determine for each donated drug that it is not adulterated or misbranded and is safe to dispense. (3-21-12)

d. Donated drugs that do not meet the criteria of these rules must be destroyed and documentation of the destruction retained. (3-21-12)

05. Storage of Donated Drugs. (3-21-12)

a. Donated drug storage must have proper environmental controls to ensure the integrity of the drug in accordance with the manufacturer's recommendations and USP standards. (3-21-12)

b. Donated drugs may be commingled with the qualifying charitable clinic or center's regular stock of drugs only if the packaging on the donated drug has been labeled to indicate that the drug was obtained from a nursing home qualified donor and otherwise must be segregated. ~~(3-21-12)~~()

c. The drug storage area must be secured at all times and accessible only to persons authorized to handle donated drugs. (3-21-12)

06. Dispensing Donated Drugs. (3-21-12)

a. Donated drugs that are expired, adulterated, misbranded, recalled, deteriorated, or not stored in appropriate conditions must not be re-dispensed, must be destroyed, and their destruction must be appropriately documented. (3-21-12)

b. A pharmacist, physician, physician assistant, dentist, optometrist, or an advanced practice

professional nurse with prescriptive authority at a qualifying charitable clinic or center who re-dispenses donated drugs to a patient must: (3-21-12)

- i. Use an appropriate container; (3-21-12)
- ii. Label the container as required by these rules except that the expiration date must be the same as on the original container; and (3-21-12)
- iii. Initial the prescription label. (3-21-12)
- c. A qualifying charitable clinic or center must retain records for each donated drug dispensed. (3-21-12)
- d. Pharmacists, physicians, physician assistants, dentists, optometrists, and advanced practice professional nurses with prescriptive authority dispensing donated drugs must perform prospective drug review and provide patient counseling. (3-21-12)

07. Miscellaneous. (3-21-12)

- a. The qualifying charitable clinic or center must maintain a list of the names of authorized clinic or center personnel, their individual duties, and a summary of their qualifications. (3-21-12)
- b. A qualifying charitable clinic or center that receives donated drugs must adopt policies and procedures requiring and with sufficient detail to ensure that authorized clinic or center personnel will comply with applicable local, state, and federal laws. (3-21-12)
- c. Drugs donated pursuant to these rules must not be sold, resold, offered for sale, traded, or transferred to another qualifying charitable clinic or center. (3-21-12)
- d. Nothing in these rules precludes a qualifying charitable clinic or center from charging a dispensing fee. (3-21-12)

(BREAK IN CONTINUITY OF SECTIONS)

635. INFUSION CLINIC, HOME HEALTH OR HOSPICE EMERGENCY KITS.

A pharmacy may supply emergency kits ~~for~~ to an infusion clinic, or to state licensed or Medicare certified home health or hospice agencies, ~~or both~~, as follows: (3-21-12)()

01. Storage and Security. Emergency kits used by infusion clinics or home health or hospice agencies must be stored in locked areas suitable for preventing unauthorized access and for ensuring a proper environment for the preservation of the drugs, except that nurses licensed by the Idaho Board of Nursing and employed by affiliated with the supplying pharmacy, an infusion clinic, or a state-licensed or Medicare-certified home health or hospice agency, may carry emergency kits on their person while on duty and in the course and scope of their employment for affiliation with the pharmacy, clinic, or agency. While not on duty or working within the course and scope of their employment affiliation, the nurses must return the emergency kits to a locked storage area or supplying pharmacy. (3-21-12)()

02. Prescription Drugs. Prescription drugs included in a home health or hospice agency emergency kit must remain the property of, and under the responsibility of, the Idaho-registered supplying pharmacy. (3-21-12)

03. Controlled Substances. Emergency kits supplied to infusion clinics or home health or hospice agencies must not include controlled substances. (3-21-12)()

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1602

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1717, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Wednesday, October 26, 2016 – 1:00 pm (MDT)

**Idaho State Capitol Building
Room WW53
514 West Jefferson
Boise, ID**

For those planning to attend the open, public hearing, written and verbal comments will be accepted by and/or presented before the Board. For all others not planning to attend the meeting, written comments will be accepted by the Executive Director on or before October 25, 2016 as follows:

- Written comments received by October 12, 2016 will be included in the Board's distributed meeting materials for consideration in advance of the meeting;
- Written comments received between October 13, 2016 and October 25, 2016 will be printed and provided to the Board at the open, public hearing.

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Board needs to update and modernize its telepharmacy rules given advancements in technology. The proposed updates will also incorporate several waivers the Board has already granted to telepharmacy petitioners. The proposed updates will do the following:

- Allow streamlined registration of remote dispensing sites to applicants who meet certain criteria.
- Broaden the technology that may be used at a remote dispensing site beyond just an Automated Dispensing System.
- Remove the requirement that a remote dispensing site be co-located with a medical care facility.
- Remove the requirement that business contracts be filed with the Board.
- Update limits on the oversight of multiple remote dispensing sites.
- Remove duplicative language from the telepharmacy rules that are already specified in other existing Board rules.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016

Idaho Administrative Bulletin, **Vol. 16-6, pages 49-50**, under Docket No. 27-0101-1601.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alex Adams, Executive Director, at (208) 334-2356 or at alex.adams@bop.idaho.gov.

DATED this 5th Day of August, 2016

Alex Adams, Pharm D, MPH
Executive Director
Board of Pharmacy
1199 W. Shoreline Ln., Ste. 303
P. O. Box 83720
Boise, ID 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-1602
(Only Those Sections With Amendments Are Shown.)

071. REMOTE DISPENSING SITE REGISTRATION.

01. Remote Dispensing Site Registration. A limited service outlet registration must be obtained by a remote dispensing site prior to participating in the practice of telepharmacy. (3-21-12)

02. Supplemental Registration Application Requirements. Prior to construction, an applicant for registration of a remote dispensing site must submit ~~and obtain Board approval of~~ a registration application. The application must include: (3-21-12)()

a. An attached description of the telepharmacy communication, electronic recordkeeping, and ~~ADS~~ electronic verification systems; (3-21-12)()

b. The operating specifications including location, ownership, current levels of pharmacist and technician staffing, and current number of supervised remote dispensing sites; ~~and~~ (3-21-12)()

c. An accurate scale drawing of the facility that illustrates: (3-21-12)

i. The layout and location of the systems; (3-21-12)

ii. The location of a patient counseling area; and (3-21-12)

iii. All access points to the electronic recordkeeping system and the ~~ADS~~ electronic verification system. (3-21-12)()

iv. A description of the proposed supervising pharmacy located in Idaho. ()

03. Approval of Registration. Prior to approval of an initial registration, an applicant with a proposed

remote dispensing site located within fifteen (15) road miles of an existing retail pharmacy must appear before the Board and demonstrate to the Board how the proposed remote dispensing site will promote public health and safety in the community. ()

(BREAK IN CONTINUITY OF SECTIONS)

710. RETAIL TELEPHARMACY WITH REMOTE DISPENSING SITES.

Pharmacies and pharmacists commencing retail telepharmacy operations with a remote dispensing site ~~after August 23, 2011,~~ must comply with the following requirements: (3-21-12)()

~~01. Telepharmacy Practice Sites and Settings. Prior to engaging in the practice of telepharmacy with a remote dispensing site, the supervising pharmacy must demonstrate that there is limited access to pharmacy services in the community in which the remote site is located. (3-21-12)~~

~~a. Information justifying the need for the remote dispensing site must be submitted with the initial registration application. (3-21-12)~~

~~b. The Board will consider the availability of pharmacists in the community, the population of the community to be served by the remote dispensing site, and the need for the service. (3-21-12)~~

~~c. The remote dispensing site must be located in a medical care facility operating in areas otherwise unable to obtain pharmaceutical care services on a timely basis. (3-21-12)~~

~~d. The Board will not approve a remote dispensing site if a retail pharmacy that dispenses prescriptions to outpatients is located within the same community as the proposed remote dispensing site. (3-21-12)~~

021. Independent Entity Contract. Unless jointly owned, a supervising pharmacy and a remote dispensing site must enter into a written contract that outlines the services to be provided and the responsibilities and accountability of each party in fulfilling the terms of the contract. (3-21-12)

~~a. A copy of the contract must be submitted to the Board with the initial registration application and at any time there is a substantial change in a contract term. (3-21-12)~~

~~b. The contract must be retained by the supervising pharmacy and made available to the Board upon request. (3-21-12)()~~

032. PIC Responsibility. Unless an alternative PIC from the supervising pharmacy is specifically designated in writing, the PIC of the supervising pharmacy is also considered the responsible PIC for the remote dispensing site. (3-21-12)

043. Remote Dispensing Site Staffing and Limitations. The ~~Board may limit the number of PIC and pharmacist-on-duty are responsible for ensuring that the supervising pharmacy and remote dispensing sites under the are sufficiently staffed to allow for appropriate supervision and management of a single pharmacy that would not be reasonably expected to result in an unreasonable risk of harm to public health, safety, or welfare.~~ (3-21-12)()

~~a. A pharmacist may neither be designated nor function as the PIC of more than two (2) total locations at one time; ()~~

~~b. The ratio of pharmacists to student pharmacists and technicians may not exceed one (1) pharmacist for every six (6) students and technicians in total at the supervising pharmacy and remote dispensing sites; and ()~~

~~c. A designated pharmacist must be capable of being on site at the remote dispensing site within twelve (12) hours if an emergency arises. ()~~

054. Technician Staffing. Unless staffed by a pharmacist, a remote dispensing site must be staffed by at least one (1) certified technician with at least two thousand (2,000) hours pharmacy technician experience *in Idaho and All technicians must remain* under the supervision of a pharmacist at the supervising pharmacy at all times that the remote site is *open operational*. Supervision does not require the pharmacist to be physically present at the remote dispensing site, but the pharmacist must supervise telepharmacy operations electronically from the supervising pharmacy. (3-21-16)()

065. Common Electronic Recordkeeping System. The remote dispensing site and the supervising pharmacy must utilize a common electronic recordkeeping system that must be capable of the following: (3-21-12)

a. Electronic records must be available to, and accessible from, both the supervising pharmacy and the remote dispensing site; and (3-21-12)

b. Prescriptions dispensed at the remote dispensing site must be distinguishable from those dispensed from the supervising pharmacy. (3-21-12)

076. Records Maintenance. Controlled substance records must be maintained at the registered location unless specific approval is granted for central storage as permitted by, and in compliance with, federal law. (3-21-12)

087. Video and Audio Communication Systems. A supervising pharmacy of *an ADS system used in* a remote dispensing site must maintain a video and audio communication system that provides for effective communication between the supervising pharmacy and the remote dispensing site personnel and consumers. The system must provide an adequate number of views of the entire site, facilitate adequate pharmacist supervision and allow the appropriate exchanges of visual, verbal, and written communications for patient counseling and other matters involved in the lawful transaction or delivery of drugs. The remote dispensing site must retain a recording of *such video and audio facility surveillance, excluding patient communications,* for a minimum of ninety (90) days. (4-11-15)()

a. Adequate supervision by the pharmacist in this setting is maintaining constant visual supervision and auditory communication with the site and full supervisory control of the automated system *that, if applicable, and* must not be delegated to another person or entity. (3-21-12)()

b. Video monitors used for the proper identification and communication with persons receiving prescription drugs must be a minimum of twelve inches (12") wide, *be of high definition* and provided at both the pharmacy and the remote location for direct visual contact between the pharmacist and the patient or the patient's agent. (3-21-12)()

c. *The video and audio communication system used to counsel and interact with each patient or patient's caregiver must be secure and HIPAA-compliant.* ()

d. Each component of the communication system must be in good working order. Unless a pharmacist is present onsite, the remote dispensing site must be, or remain, closed *to the public* if any component of the communication system is malfunctioning until system corrections or repairs are completed. (3-21-12)()

098. Access and Operating Limitations. Unless a pharmacist is present, a remote dispensing site must not be open or its employees allowed access to it during times the supervising pharmacy is closed. The security system must allow for tracking of entries into the remote dispensing site, and the PIC must periodically review the record of entries. (3-21-12)

109. Delivery and Storage of Drugs. If controlled substances are maintained or dispensed from the remote dispensing site, transfers of controlled substances from the supervising pharmacy to the remote dispensing site must comply with applicable state and federal requirements. (3-21-12)

a. Drugs must only be delivered to the remote dispensing site in a sealed container with a list identifying the drugs, drug strength, and quantities included in the container. Drugs must not be delivered to the remote dispensing site unless a technician or pharmacist is present to accept delivery and verify that the drugs sent were actually received, *unless placed in a secure delivery area in accordance with state and federal law.* The

technician or pharmacist who receives and checks the order must verify receipt by signing and dating the list of drugs delivered. (3-21-12)()

b. If performed by a technician, a pharmacist at the supervising pharmacy must ensure, through use of the electronic audio and video communications systems or bar code technology, that a technician has accurately and correctly restocked drugs into the ADS system or cabinet, as applicable. (3-21-12)()

c. Drugs at the remote dispensing site must be stored in a manner to protect their identity, safety, security, and integrity and comply with the drug product storage requirements of these rules. (3-21-12)

d. Drugs, including previously filled prescriptions, not contained within an ADS system must be stored in a ~~locked cabinet within a~~ secured ~~area of a remote dispensing site~~ manner and access must be limited to pharmacists from the supervising pharmacy and the technicians authorized in writing by the PIC. (3-21-12)()

~~**11.** **Wasting or Discarding of Drugs Prohibited.** Wasting or discarding of drugs resulting from the use of an ADS system in a remote dispensing site is prohibited. (3-21-12)~~

~~**12.** **Returns Prohibited.** The technician at a remote dispensing site must not accept drugs returned by a patient or patient's agent. (3-21-12)~~

130. Security. A remote dispensing site must be equipped with adequate security. (4-11-15)

~~**a.**~~ At least while closed, a remote dispensing site must utilize an alarm or other comparable monitoring system to protect its equipment, records, and supply of drugs, devices, and other restricted sale items from unauthorized access, acquisition, or use. ~~The site must have a means of recording the time of entry and the identity of all persons who access the site, which must be retained for ninety (90) days.~~ Two (2) factoring credentialing is required for entry, which must include two (2) of the following: (4-11-15)()

~~**i.**~~ Something known (a knowledge factor); (4-11-15)

~~**ii.**~~ Something possessed (a hard token stored separately from the computer being accessed); and (4-11-15)

~~**iii.**~~ Something biometric (finger print, retinal scan, etc.); (4-11-15)

~~**b.** A remote dispensing site must be totally enclosed in a manner sufficient to provide adequate security for the pharmacy, as required by this rule and approved by the Board. All remote dispensing sites must meet the following security requirements: (4-11-15)~~

~~**i.** Walls must extend to the roof or the pharmacy must be similarly secured from unauthorized entry. (4-11-15)~~

~~**ii.** Solid core or metal doors are required. (4-11-15)~~

~~**iii.** Doors and other access points must be constructed in a manner that the hinge hardware is tamper-proof when closed. (4-11-15)~~

~~**e.** Access to the area of the remote dispensing site where prescription drugs are prepared, distributed, dispensed or stored must be limited to technicians and pharmacists. Any other persons requiring access to the remote dispensing site for legitimate business reasons may only be present in the secured area with the permission and under the supervision of a pharmacist, which may be satisfied via audio/video communication. (4-11-15)~~

~~**d.** A remote dispensing site must be closed for business and secured during all times a pharmacist or technician is not present. (4-11-15)~~

141. Patient Counseling. A remote dispensing site must include an appropriate area for patient counseling. (3-21-12)

~~a. The area must be readily accessible to patients and must be designed to maintain the confidentiality and privacy of a patient's conversation with the pharmacist. (3-21-12)~~

~~b. Unless onsite, a pharmacist must use HIPAA-compliant the video and audio communication system to counsel each patient or the patient's caregiver on new medications. (3-21-12)()~~

152. Remote Dispensing Site Sign. A remote dispensing site must display a sign, easily visible to the public, that informs patients that: (3-21-12)

a. The location is a remote dispensing site providing telepharmacy services supervised by a pharmacist located in another pharmacy; (3-21-12)

b. Identifies the city or township where the supervising pharmacy is located; and (3-21-12)

c. Informs patients that a pharmacist is required to speak with the patient using audio and video communication systems each time a new medication is delivered ~~or~~ and if counseling is accepted on a refill at a remote dispensing site. (3-21-12)()

163. Pharmacist Inspection and Inventories of Remote Dispensing Site. A pharmacist must complete and document: ()

~~a. A monthly in-person self-inspection of a remote dispensing site using a form designated by the Board and such inspection reports must be retained: (3-21-12)()~~

~~b. A perpetual inventory must be kept for all Schedule II controlled substances; and ()~~

~~c. Three (3) controlled substances must be audited and documented quarterly by the pharmacist. ()~~

174. Continuous Quality Improvement Program. The PIC of the remote dispensing site must develop and implement a continuous quality improvement program. This program must be made available to the Board upon request. (4-11-15)()

711. RETAIL TELEPHARMACY WITH REMOTE DISPENSING SITES: PRESCRIPTION DRUG ORDERS.

~~*Prescription drug orders dispensed from a remote dispensing site must be previously filled by the supervising pharmacy or, unless a pharmacist is present, must only be filled on the premises of a remote dispensing site through the use of an ADS system and as follows:* (3-21-12)~~

01. Pharmacist Verification of New Prescription Drug Order Information. If a technician at the remote dispensing site enters original or new prescription drug order information into the automated pharmacy system, the pharmacist at the supervising pharmacy must, prior to approving, verify the information entered against a faxed, electronic, or video image of the original prescription. (3-21-12)

a. The technician may transmit the prescription drug order to the pharmacist by scanning it into the electronic recordkeeping system if the means of scanning, transmitting, or storing the image does not obscure the prescription information or render the prescription information illegible. (3-21-12)

b. Alternatively, the technician may make the original prescription available to the pharmacist by placing the prescription in an appropriate position to facilitate viewing of the original prescription via video communication systems between the remote dispensing site and the supervising pharmacy. Using the video communication, the pharmacist must verify the accuracy of the drug dispensed and must check the prescription label for accuracy, unless checked in compliance with the accuracy checking technician procedures. (3-21-12)()

c. Except when prohibited by law for controlled substances, the technician may also transmit the prescription drug order to the supervising pharmacist by fax. (3-21-12)

~~d. A technician at a remote dispensing site must not receive oral prescription drug orders from a prescriber or a prescriber's agent. Oral prescription drug orders must be communicated directly to a pharmacist. (3-21-12)~~

02. Pharmacist and Technician Identification. The initials or other unique identifiers of the pharmacist and technician involved in the dispensing must appear in the prescription record. (3-21-12)

03. Pharmacist Verification of Drug Product and Label. A pharmacist must compare, via video or image-based communication, the drug stock, the drug dispensed, and the label including the beyond use date. (3-21-12)()

04. Electronic Verification System. The remote dispensing site must use an electronic verification system that confirms the drug stock selected to fill the prescription is the same as indicated on the prescription label. The technician must electronically verify each prescription prepared for dispensing. (3-21-12)

712. RETAIL TELEPHARMACY WITH REMOTE DISPENSING SITES: POLICIES AND PROCEDURES.

A supervising pharmacy commencing telepharmacy operations with a remote dispensing site must adopt policies and procedures that address each of the following areas prior to engaging in the practice of telepharmacy. (3-21-12)

01. Minimum Standards. The establishment of minimum standards and practices necessary to ensure safety, accuracy, security, sanitation, recordkeeping, and patient confidentiality, including at least: (3-21-12)

a. Identification of personnel authorized to have access to drug storage and dispensing areas at the remote dispensing site and to receive drugs delivered to the remote dispensing site; (3-21-12)

b. Procedures for the procurement of drugs and devices to the remote site and into any ADS systems used, as applicable; and (3-21-12)()

c. The criteria for monthly in-person pharmacist inspections of the remote dispensing site and appropriate documentation. (3-21-12)

02. Training Standards. The adoption of standards and training required for remote dispensing site technicians and pharmacists to ensure the competence and ability of each person that operates the ADS electronic verification system, electronic recordkeeping, and communication systems and a requirement for retention of training documentation. (3-21-12)()

03. Written Recovery Plan. A written plan for recovery from an event that interrupts or prevents pharmacist supervision of, or otherwise compromises, the dispensing of drugs from the remote dispensing site that includes at least the following: (3-21-12)

a. Procedures for response while the communication or electronic recordkeeping systems are experiencing downtime or for an ADS electronic verification system malfunction; and (3-21-12)()

b. Procedures for the maintenance and testing of the written plan for recovery. (3-21-12)

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1603

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1717, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Wednesday, October 26, 2016 – 1:00 pm (MDT)

**Idaho State Capitol Building
Room WW53
514 West Jefferson
Boise, ID**

For those planning to attend the open, public hearing, written and verbal comments will be accepted by and/or presented before the Board. For all others not planning to attend the meeting, written comments will be accepted by the Executive Director on or before October 25, 2016 as follows:

- Written comments received by October 12, 2016 will be included in the Board's distributed meeting materials for consideration in advance of the meeting;
- Written comments received between October 13, 2016 and October 25, 2016 will be printed and provided to the Board at the open, public hearing.

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Board needs to update and modernize its pharmacy technician rules given advancements in the education and training of technicians as well as advancements in the technology environment. The proposed updates seek to achieve the following, many of which are commonplace in other states:

- Allow pharmacists to delegate certain non-judgmental tasks to properly-trained, registered and certified pharmacy technicians under their supervision. Such delegated tasks include the ability to clarify missing elements on prescriptions, transfer prescriptions, administer medications, and take verbal prescriptions in certain circumstances.
- Expand verification technician programs beyond acute care hospitals.
- Enable remote data entry by certain pharmacy technicians.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016 Idaho Administrative Bulletin, [Vol. 16-6, pages 49-50](#), under Docket No. 27-0101-1601.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alex Adams, Executive Director, at (208) 334-2356 or at alex.adams@bop.idaho.gov.

DATED this 5th Day of August, 2016

Alex Adams, Pharm D, MPH
Executive Director
Board of Pharmacy
1199 W. Shoreline Ln., Ste. 303
P. O. Box 83720
Boise, ID 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-1603
(Only Those Sections With Amendments Are Shown.)

115. PRESCRIPTION DRUG ORDER: TRANSFERS.

01. Communicating Prescription Drug Order Transfers. ~~Except prescription drug orders for Schedule II controlled substances, a~~ **Δ** pharmacist, **student pharmacist, or a certified technician** may transfer prescription drug order information for the purpose of filling or refilling if the information is communicated ~~from pharmacist to pharmacist~~ verbally, electronically, or via fax. (3-21-12)()

~~a. Prescription drug order information may also be communicated verbally by a student pharmacist, under the supervision of a pharmacist, to another pharmacist as long as one (1) of the parties involved in the communication is a pharmacist.~~ (3-21-12)

~~b. If transferring by fax transmission, the transfer document used must be signed by the transferring pharmacist.~~ (3-21-12)

02. Documentation Required of the Transferring Pharmacy. The ~~pharmacist~~ **qualified individual** transferring prescription drug order information must void or otherwise indicate that the original prescription drug order has been transferred and record the following information: (3-21-12)()

- a. The name of the transferring ~~pharmacist~~ **individual**; (3-21-12)()
- b. The name of the ~~pharmacist~~ **individual**; (3-21-12)()
- c. The name of the receiving pharmacy; (3-21-12)
- d. The date of the transfer; (3-21-12)
- e. The number of authorized refills available; and (3-21-12)
- f. If written for a controlled substance, the address and DEA registration number of the receiving

pharmacy. (3-21-12)

03. Documentation Required of the Receiving Pharmacy. The *pharmacist* qualified individual receiving a transferred prescription drug order must document that the prescription drug order is a “transfer” and record the following information: (3-21-12)()

- a. The name of the receiving *pharmacist* individual; (3-21-12)()
- b. The name of the transferring *pharmacist* individual; (3-21-12)()
- c. The name of the transferring pharmacy; (3-21-12)
- d. The date of issuance of the original prescription drug order; (3-21-12)
- e. The number of refills authorized by the original prescription drug order; (3-21-12)
- f. The number of authorized refills available; and (3-21-12)
- g. If written for a controlled substance: (3-21-12)
 - i. The dates and locations of the original dispensing and previous refills; and (3-21-12)
 - ii. The name, address, DEA registration number, and the serial number assigned to the prescription by the transferring pharmacy and any additional pharmacy that filled the prescription, if applicable. (4-4-13)

04. Electronic Prescription Drug Order Transfers. For electronic prescription drug orders that are transferred electronically, the transferring pharmacist must provide all of the information required to be recorded by the receiving pharmacist in addition to the original electronic prescription data. The receiving pharmacist must create an electronic record for the prescription drug order that includes the receiving pharmacist’s name and all of the information transferred with the prescription. (3-21-12)

05. Pharmacies Using Common Electronic Files. Pharmacies may establish and use a common electronic file to maintain required dispensing information. (3-21-12)

- a. Pharmacies using a common electronic file are not required to transfer prescription drug order information for dispensing purposes between or among other pharmacies sharing the common electronic file. (3-21-12)
- b. Common electronic files must contain complete and accurate records of each prescription and refill dispensed. (3-21-12)

06. Transferring Prescription Drug Orders for Controlled Substances. A prescription drug order for a controlled substance listed in Schedules III, IV, or V may be transferred only from the pharmacy where it was originally filled and never from the pharmacy that received the transfer, except that pharmacies electronically sharing a real-time, online database may transfer up to the maximum refills permitted by law and the prescriber’s authorization. (3-21-12)

07. Transferring Prescription Drug Order Refills. Prescription drug orders for non-controlled substances may be transferred more than one (1) time if there are refills remaining and other legal requirements are satisfied. (3-21-12)

(BREAK IN CONTINUITY OF SECTIONS)

321. TECHNICIAN: REMOTE DATA ENTRY SITES.
A pharmacy located in Idaho may employ one (1) or more certified technicians under the authority of the PIC for the

purpose of data entry in remote practice sites located in Idaho. ()

01. Technician Qualification. All pharmacy technicians employed to work at a remote data entry practice site must be a certified technician. ()

02. Prohibition on Inventory. No drug inventory may be kept at any remote pharmacy technician data entry site and no dispensing may take place from a remote pharmacy technician data entry site. ()

03. Audit Trail Documentation. All remote pharmacy technician data entry sites must have a procedure for identifying the certified technician and all other persons responsible for each aspect of the prescription preparation. ()

04. Remote Site Operations. ()

a. If the remote pharmacy data entry site is located within a home, there must be a designated area in which all of the technician's work will be performed. ()

b. All computer equipment used at the remote technician data entry site must be able to establish a secure connection. Remote equipment must be configured so that patient information is not stored at the remote site electronically or in printed form. ()

c. Computer equipment may be used for remote technician data entry. No other use of the equipment is allowed. ()

d. Computer equipment must be locked or shut down whenever the technician is absent. ()

05. Security Requirements. Remote pharmacy technician data entry sites must have adequate security to maintain patient confidentiality, and utilize equipment that prevents unauthorized storage or transfer of patient information. ()

06. PIC Responsibilities. The PIC must: ()

a. Provide a written policy and procedure document outlining the operation and security of each remote pharmacy technician data entry site location. The document must be available at each practice site; ()

b. Keep a continuously updated list of all remote technician data entry sites to include address and phone number for each site. The record must be retained as part of the records of the licensed pharmacy; ()

c. Ensure that the Idaho licensed pharmacy and each remote data entry technician has entered into a written agreement outlining all conditions and policies governing the operation of the remote site; ()

d. Ensure that all computer equipment used at the remote site is in good working order, provides data protection, and complies with all security and HIPAA requirements; ()

e. Establish a quality monitoring and improvement program for each remote data entry site; and ()

f. Ensure adequate supervision of all remote technicians. The PIC is expected to ensure that the overall level of staffing does not result in, or would reasonably be expected to result in, an unreasonable risk of harm to public health, safety, or welfare. ()

07. Ratio. A remote data entry technician does not count against the ratio of pharmacists to student pharmacists and technicians set forth in these rules. ()

08. Inspections. All remote data entry sites are subject to unannounced inspection by a representative of the Board during established hours of operation. ()

~~32+2.~~ -- 329. (RESERVED)

330. PHARMACIST: ADMINISTERED IMMUNIZATIONS.

01. Patient Eligibility. A pharmacist may administer an immunization to a healthy patient without immunization contraindications pursuant to the latest recommendations by the CDC or other qualified government authority or to any patient pursuant to a prescription drug order issued by another prescriber. (3-21-12)

02. Pharmacist Qualifications. To qualify to administer immunizations, a pharmacist must first: (3-21-12)

a. Successfully complete a course by an ACPE-accredited provider or a comparable course that meets the standards for pediatric, adolescent, and adult immunization practices recommended and approved by the CDC's Advisory Committee on Immunization Practices and includes at least the following: ~~(3-21-12)~~ ()

i. Basic immunology, vaccine, and immunization protection; (3-21-12)

ii. Diseases that may be prevented by vaccination or immunization; (3-21-12)

iii. Current recommended immunization schedules; (3-21-12)

iv. Vaccine and immunization storage and management; (3-21-12)

v. Informed consent; (3-21-12)

vi. Physiology and techniques for administration of immunizations; (3-21-12)

vii. Pre-immunization and post-immunization assessment and counseling; (3-21-12)

viii. Immunization reporting and records management; and (3-21-12)

ix. Identification response, documentation, and reporting of adverse events. (3-21-12)

b. Hold a current certification in basic life support for healthcare providers offered by the American Heart Association or a comparable Board-recognized certification program that includes cardiopulmonary resuscitation (CPR) and automated electronic defibrillator (AED) training and requires a hands-on skills assessment by an authorized instructor. (3-21-12)

~~**03. Maintaining Qualification.** To maintain qualification to administer immunizations, a pharmacist must annually complete a minimum of one (1) CPE hour of ACPE-approved CPE related to vaccines, immunizations, or their administration, which may also be applied to the general CPE requirements of these rules. (4-4-13)~~

~~**043. Student Pharmacist Delegation of Administration.** An immunizing pharmacist may not delegate authority to the technical task of administering an immunizations; however, to a student pharmacist or a certified technician under their supervision who has satisfied the qualifications may administer immunizations under the direct supervision of a qualified immunizing pharmacist. ~~(3-21-12)~~ ()~~

~~**a.** Holds a current certification in basic life support for healthcare providers offered by the American Heart Association or a comparable Board-recognized certification program that includes cardiopulmonary resuscitation (CPR) and automated electronic defibrillator (AED) training and requires a hands-on skills assessment by an authorized instructor; and ()~~

~~**b.** Has successfully completed a course on intramuscular, subcutaneous, and intranasal technique by an ACPE-accredited provider or a comparable course; or ()~~

~~**c.** Has successfully completed the pharmacist qualifications specified under this rule. ()~~

- 05. Waste Disposal.** An immunizing pharmacist must properly dispose of used or contaminated supplies. (3-21-12)
- 06. Required Reports.** An immunizing pharmacist must report: (3-21-12)
- a.** Adverse events to the healthcare provider identified by the patient, if any, and to the Vaccine Adverse Event Reporting System (VAERS); and (3-21-12)
- b.** Administration of immunizations to the Idaho Immunization Reminder Information System (IRIS), as required. (3-21-12)
- 07. Required Resources.** A pharmacist must have a current copy of, or on-site access to, the CDC's Epidemiology and Prevention of Vaccine-Preventable Diseases. (3-21-12)
- 08. Vaccine Information Statements.** A corresponding, current CDC-issued VIS must be provided to the patient or the patient's representative for each administered immunization. (3-21-12)
- 09. Recordkeeping.** For each administered immunization, the following information must be collected and maintained in the patient profile: (3-21-12)
- a.** The patient's name, address, date of birth, and known allergies; (3-21-12)
- b.** The date of administration; (3-21-12)
- c.** The product name, manufacturer, dose, lot number, and expiration date of the vaccine; (3-21-12)
- d.** Documentation identifying the VIS provided; (3-21-12)
- e.** The site and route of administration and, if applicable, the dose in a series (e.g. one (1) of three (3)); (3-21-12)
- f.** The name of the patient's healthcare provider, if any; (3-21-12)
- g.** The name of the immunizing pharmacist and of the student pharmacist, if any; (3-21-12)
- h.** Adverse events observed or reported, if any, and documentation including at least the dates of any subsequent required reporting; and (3-21-12)
- i.** Completed informed consent forms. (3-21-12)
- 10. Emergencies.** (3-21-12)
- a.** An immunizing pharmacist must maintain an immediately retrievable emergency kit sufficiently stocked to manage an acute allergic reaction to an immunization. At a minimum, the kit must include: (4-11-15)
- i.** Intramuscular diphenhydramine; (4-11-15)
- ii.** Oral diphenhydramine; (4-11-15)
- iii.** Appropriate needles and syringes for injection; (4-11-15)
- iv.** Alcohol; and (4-11-15)
- v.** At least one (1) of the following: (4-11-15)
- (1)** Auto-inject epinephrine; (4-11-15)

(2) A vial of epinephrine with a dosing chart based on average body mass by age for patients under the age of fourteen (14); or (4-11-15)

(3) An ampule of epinephrine with a dosing chart based on average body mass by age for patients under the age of fourteen (14) and filter needles. (4-11-15)

b. An immunizing pharmacist may initiate and administer epinephrine, intramuscular diphenhydramine, or oral diphenhydramine to treat an acute allergic reaction to an immunization pursuant to guidelines issued by the American Pharmacy Association. (4-11-15)

(BREAK IN CONTINUITY OF SECTIONS)

360. STUDENT PHARMACIST: UTILIZATION AND PRACTICE LIMITATIONS.

01. Activities. A student pharmacist may engage in the practice activities of a pharmacist if: (3-21-12)

a. The activity is not specifically required to be performed only by a pharmacist; (3-21-12)

b. The activity is commensurate with the education and skill of the student pharmacist and performed under the supervision of a pharmacist; (3-21-12)

c. Any activity of a compounding, dispensing, or interpretive nature is checked by a pharmacist; and (3-21-12)

d. Any recording activity that requires the initial or signature of a pharmacist is countersigned by a pharmacist, unless performing activities in compliance with the accuracy checking technician procedures. (3-21-12)()

02. Unlawful Acceptance of Assignment. A student pharmacist must not accept assignment of, or perform, any task or function connected with pharmacy operations unless the student pharmacist is authorized by the assigning pharmacist and the task or function meets the criteria set forth in this rule. (3-21-12)

03. Identification of Student Pharmacists. (3-21-12)

a. Each student pharmacist must be identified by a clearly visible name badge designating the individual as a student pharmacist. The name badge must contain the individual's printed first name and the title of student pharmacist, pharmacist intern, pharmacist extern, or another title that conveys the same meaning. (3-21-12)

b. Student pharmacists must identify themselves as a student pharmacist, pharmacist intern, or pharmacist extern on any phone calls initiated or received while on duty. (3-21-12)

361. -- 399. (RESERVED)

400. TECHNICIAN -- UTILIZATION AND PRACTICE LIMITATIONS.

01. Unlawful Acceptance of Assignment. A technician must not accept assignment of, or perform, any task or function connected with pharmacy operations unless the technician is authorized by the assigning pharmacist and the task or function meets the criteria set forth in this rule. (3-21-12)

02. Unlawful Performance. A technician must not perform tasks or functions connected with pharmacy operations that: (3-21-12)

a. Are not routine; (3-21-12)

b. The technician is not adequately trained to perform; (3-21-12)

- c. The technician has inadequate pharmacist supervision to perform; or (3-21-12)
- d. Requires the use of a pharmacist's professional judgment. (3-21-12)

03. Prohibited Tasks or Functions by a Technician. ~~Unless excepted, a~~ technician must not do any of the following which, without limiting the scope of the term "professional judgment," is a non-exclusive list of actions requiring a pharmacist's professional judgment: ~~(3-21-12)()~~

a. Receive a new verbal prescription drug order from a prescriber or other person authorized by law and, either manually or electronically, reduce the order to writing. ~~except if performed by a certified technician;~~ ~~(3-21-12)()~~

b. Consult with the prescriber prior to filling if clarification of information is needed regarding a patient or the prescription drug order. ~~except if performed by a certified technician at the direction of a supervising pharmacist;~~ ~~(3-21-12)()~~

c. Perform prospective drug review or interpret clinical data in a patient's medication record (e.g., contraindications, drug interactions, etc.); (3-21-12)

d. Perform professional consultation with a prescriber, nurse, or other healthcare professional; (3-21-12)

e. Supervise the packaging of drugs and check the completed procedure and product, unless checked in compliance with the ~~verification~~ accuracy checking technician procedures ~~allowed in institutional facilities;~~ ~~(3-21-12)()~~

f. Provide patient consultation on a new or refilled prescription or on over-the-counter drugs or supplements; and (3-21-12)

g. Supervise the pharmacy operations activities of student pharmacists and technicians. (3-21-12)

04. Technician Identification. (3-21-12)

a. Each technician must be identified by a clearly visible name badge designating the individual as a technician. The name badge must contain the individual's printed first name and the title of technician. (3-21-12)

b. Technicians must identify themselves as a technician on any phone calls initiated or received while on duty. (3-21-12)

401. -- 409. (RESERVED)

410. ~~VERIFICATION~~ ACCURACY CHECKING TECHNICIAN PROGRAM.

~~Only institutional p~~Pharmacies ~~located within acute care hospitals~~ may utilize ~~a verification~~ an accuracy checking technician program according to these rules.

01. Program Scope. ~~A verification~~ An accuracy checking technician program allows qualified technicians to ~~verify~~ perform accuracy checking the work of other technicians and student pharmacists, or products filled by an ADS and other technology-assisted filling equipment, in the filling of ~~floor and ward stock and unit dose distribution systems for patients whose;~~ ~~()~~

a. Drug orders or prescription drug orders that have previously ~~been~~ undergone prospective drug reviewed ~~and approved~~ by a pharmacist; ~~or~~ ~~(3-21-12)()~~

b. If in an institutional setting, floor and ward stock, and drugs that a practitioner controls the order, preparation, and administration of in accordance with state and federal law. ~~()~~

012. **Written Program ~~Filing~~ Description.** Prior to initiating ~~a verification~~ an accuracy checking technician program, ~~an institutional~~ pharmacy must prepare a written program description that includes at least the following: (3-21-12)(____)

a. The name of the pharmacist assigned as the coordinator of the ~~verification~~ accuracy checking technician program; (3-21-12)(____)

b. A description of the duties of the coordinator sufficient to ensure and demonstrate compliance by the ~~institutional~~ pharmacy with these ~~verification~~ accuracy checking technician program rules; (3-21-12)(____)

c. A description of the duties of technicians designated to perform the functions of verifying the work of other technicians; (3-21-12)

d. Identification of the types of drugs ~~verification~~ accuracy checking technicians are authorized to verify; (3-21-12)(____)

e. A description of the specialized and advanced training that must be provided to each ~~verification~~ accuracy checking technician; and (3-21-12)(____)

f. A description of the monitoring and evaluation processes used by the ~~institutional~~ pharmacy to ensure the ongoing competency of each ~~verification~~ accuracy checking technician. (3-21-12)(____)

023. **Program Requirements.** Each ~~institutional~~ pharmacy utilizing ~~a verification~~ an accuracy checking technician program must comply with the following requirements: (3-21-12)(____)

a. A technician must neither be designated to perform, nor may the technician perform, ~~verification~~ accuracy checking functions without competently completing the required training. (3-21-12)(____)

b. ~~A verification~~ An accuracy checking technician may not verify ~~only manufacturer prepared or robotically prepared unit dose drugs identified in the written program description for floor or ward stock or unit dose distribution systems of pharmacist reviewed and approved~~ a compounded drug orders for hospital patients. ~~If either the alteration of a unit dose or the combination of unit doses is required, a pharmacist must verify the resulting unit dose alteration or combination of unit doses~~ any other drug excluded in the written program description. (3-21-12)(____)

c. The ~~institutional~~ pharmacy must conduct ongoing unannounced monitoring and evaluation of each ~~verification~~ accuracy checking technician at least quarterly for the first year and then annually thereafter to ensure the ongoing competency of the technician, and must remediate or remove from accuracy checking duty a technician who does not meet defined performance standards. (3-21-12)(____)

d. For each ~~verification~~ accuracy checking technician, ~~an institutional~~ pharmacy utilizing ~~a verification~~ an accuracy checking technician program must maintain records containing: (3-21-12)(____)

i. The date the accuracy checking technician was designated; (3-21-12)(____)

ii. The date the accuracy checking technician completed the required training; (3-21-12)(____)

iii. The dates and results of each competency evaluation; and (3-21-12)

iv. The dates of, and reasons for, any suspension or revocation of the technician's designation or other disciplinary action against the ~~verification~~ accuracy checking technician connected with the performance of the technician's duties in the ~~verification~~ accuracy checking technician program. (3-21-12)(____)

e. While on duty, each ~~verification~~ accuracy checking technician must wear identification that includes the title, "~~verification~~ Accuracy Checking Technician." (3-21-12)(____)

f. The duties of the ~~verification~~ accuracy checking technician program coordinator must include the

supervision of ~~verification~~ accuracy checking technicians to ensure their duties are performed competently in a manner that protects patient safety. ~~(3-21-12)~~()

g. Retail pharmacies implementing an accuracy checking technician program must use an electronic verification system that confirms the drug stock selected to fill the prescription is the same as indicated on the prescription label. Each prescription prepared for dispensing under an accuracy checking program must be electronically verified and electronically documented. ()

04. Student Pharmacist Participation. Student pharmacists may participate fully in an accuracy checking technician program with the same limitations and requirements as accuracy checking technicians. ()

05. Board Review. The written program description and records required under this section must be made available to the Board upon request. ()

(BREAK IN CONTINUITY OF SECTIONS)

607. PHARMACY STAFFING AND RATIO.

01. Staffing. A pharmacy must be staffed sufficiently to allow for appropriate supervision, to otherwise operate in compliance with the law, and if applicable, to remain open during the hours posted as open to the public for business. (3-21-12)

02. Ratio. Unless otherwise provided by these rules, ~~7~~the ratio of pharmacists to student pharmacists and technicians may not exceed one (1) pharmacist for every six (6) student pharmacists and technicians in total in any practice setting. A pharmacist must not operate a pharmacy, allow the operation of a pharmacy, or be required to operate a pharmacy with a ratio that results in, or would reasonably be expected to result in, an unreasonable risk of harm to public health, safety, or welfare. ~~(3-21-12)~~()

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1604

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1717, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Wednesday, October 26, 2016 – 1:00 pm (MDT)

**Idaho State Capitol Building
Room WW53
514 W. Jefferson
Boise, ID**

For those planning to attend the open, public hearing, written and verbal comments will be accepted by and/or presented before the Board. For all others not planning to attend the meeting, written comments will be accepted by the Executive Director on or before October 25, 2016 as follows:

- Written comments received by October 12, 2016 will be included in the Board's distributed meeting materials for consideration in advance of the meeting;
- Written comments received between October 13, 2016 and October 25, 2016 will be printed and provided to the Board at the open, public hearing.

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Board needs to update several rules given advancements in technology and changes in pharmacy practice. In addition, the Board intends to clarify several rules based on recent inspections and Board administrative hearings. The proposed updates will do the following:

- Update the security requirements that pharmacies must follow.
- Clarify the provisions for legal medication returns for institutional pharmacies and to authorize collection for destruction.
- Enable broader emergency room dispensing in conformance with a U.S. Supreme Court decision.
- Enable pharmacists to better coordinate refills of medications in order to improve patient medication adherence.
- Require the timely notification of medication errors that result in fatal outcomes.
- Update requirements for licensure applicants.
- Clarify prepackaged product labeling requirements.
- Update the list of required pharmacy references.
- Update pharmacy delivery restrictions.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state

general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016 Idaho Administrative Bulletin, **Vol. 16-6, pages 49-50**, under Docket No. 27-0101-1601.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alex Adams, Executive Director, at (208) 334-2356 or at alex.adams@bop.idaho.gov.

DATED this 5th Day of August, 2016

Alex Adams, Pharm D, MPH
Executive Director
Board of Pharmacy
1199 W. Shoreline Ln., Ste. 303
P. O. Box 83720
Boise, ID 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-1604
(Only Those Sections With Amendments Are Shown.)

011. DEFINITIONS AND ABBREVIATIONS (J -- R).

01. LTCF -- Long-Term Care Facility. An institutional facility that provides extended health care to resident patients. (3-21-12)

02. Mail Service Pharmacy. A nonresident pharmacy that ships, mails, or delivers by any lawful means a dispensed legend drug to residents in this state pursuant to a legally issued prescription drug order and ensures the provision of corresponding related pharmaceutical care services required by law. (7-1-13)

03. Maintenance Drug. A drug intended for the treatment of a health condition or disease that is persistent or otherwise expected to be long lasting in its effects. ()

04. Medication Synchronization Program. An opt-in program provided by a pharmacy for aligning the refill dates of a patient's prescription drugs so that drugs that are refilled at the same frequency may be refilled concurrently. ()

035. MPJE. Multistate Pharmacy Jurisprudence Exam. (3-21-12)

046. MTM -- Medication Therapy Management. A distinct service or group of services that optimize therapeutic outcomes for individual patients. MTM services are independent of, but can occur in conjunction with, the provision or administration of a drug or a device and encompass a broad range of activities and responsibilities. The MTM service model in pharmacy practice includes the following five core elements: (3-21-12)

- a. Medication therapy review; (3-21-12)
- b. Personal medication record; (3-21-12)
- c. Medication-related action plan; (3-21-12)
- d. Intervention or referral, or both; (3-21-12)
- e. Documentation and follow-up. (3-21-12)
- ~~057~~. **NABP**. National Association of Boards of Pharmacy. (3-21-12)
- ~~068~~. **NAPLEX**. North American Pharmacists Licensure Examination. (3-21-12)
- ~~079~~. **NDC**. National Drug Code. (3-21-12)
- ~~0810~~. **Non-Institutional Pharmacy**. A pharmacy located in a drug outlet that is not an institutional facility. (3-21-12)
- ~~0911~~. **Outsourcing Drug Outlet**. A drug outlet that is registered by the United States Food and Drug Administration pursuant to 21 U.S.C. Section 353b and either registered or endorsed by the Board. (4-6-15)
- ~~102~~. **Parenteral Admixture**. The preparation and labeling of sterile products intended for administration by injection. (3-21-12)
- ~~143~~. **Pharmaceutical Care Services**. A broad range of pharmacist-provided cognitive services, activities and responsibilities intended to optimize drug-related therapeutic outcomes for patients. Pharmaceutical care services may be performed independent of, or concurrently with, the dispensing or administration of a drug or device and encompasses services provided by way of DTM under a collaborative practice agreement, pharmacotherapy, clinical pharmacy practice, pharmacist independent practice, and MTM. Except as permitted pursuant to a collaborative practice agreement, nothing in these rules allows a pharmacist, beyond what is statutorily allowed, to engage in the unlicensed practice of medicine or to diagnose, prescribe, or conduct physical examinations. Pharmaceutical care services are not limited to, but may include one (1) or more of the following, according to the individual needs of the patient: (4-4-13)
 - a. Performing or obtaining necessary assessments of the patient's health status, including the performance of health screening activities that may include, but are not limited to, obtaining finger-stick blood samples; (3-21-12)
 - b. Reviewing, analyzing, evaluating, formulating or providing a drug utilization plan; (3-21-12)
 - c. Monitoring and evaluating the patient's response to drug therapy, including safety and effectiveness; (3-21-12)
 - d. Performing a comprehensive drug review to identify, resolve, and prevent drug-related problems, including adverse drug events; (3-21-12)
 - e. Documenting the care delivered; (3-21-12)
 - f. Communicating essential information or referring the patient when necessary or appropriate; (3-21-12)
 - g. Providing counseling education, information, support services, and resources applicable to a drug, disease state, or a related condition or designed to enhance patient compliance with therapeutic regimens; (3-21-12)
 - h. Conducting a drug therapy review consultation with the patient or caregiver; (3-21-12)

- i. Preparing or providing information as part of a personal health record; (3-21-12)
 - j. Identifying processes to improve continuity of care and patient outcomes; (3-21-12)
 - k. Providing consultative drug-related intervention and referral services; (3-21-12)
 - l. Coordinating and integrating pharmaceutical care services within the broader health care management services being provided to the patient; (3-25-16)
 - m. Ordering and interpreting laboratory tests; and (3-25-16)
 - n. Other services as allowed by law. (3-21-12)
- 124.** **Pharmacist Extern.** A person enrolled in an accredited school or college of pharmacy who is pursuing a professional degree in pharmacy. (4-4-13)
- 135.** **Pharmacist Intern.** A person who has successfully completed a course of study at an accredited school or college of pharmacy, has received a professional degree in pharmacy, and is obtaining practical experience under the supervision of a pharmacist. (3-21-12)
- 146.** **Pharmacy Operations.** Activities related to and including the preparation, compounding, distributing, or dispensing of drugs or devices from a pharmacy. (3-21-12)
- 157.** **PHI -- Protected Health Information.** Individually identifiable health information that is: (3-21-12)
- a. Transmitted by electronic media (as defined by the HIPAA Privacy Rule at 45 CFR 160.103); (3-21-12)
 - b. Maintained in electronic media; and (3-21-12)
 - c. Transmitted or maintained in any other form or medium. (3-21-12)
 - d. PHI excludes individually identifiable health information in:
 - i. Education records covered by the Family Education Right and Privacy Act, as amended (20 U.S.C. Section 1232g); (3-21-12)
 - ii. Records described at 20 U.S.C. Section 1232g(a)(4)(B)(iv); and (3-21-12)
 - iii. Employment records held by a covered entity (as defined by the HIPAA Privacy Rule at 45 CFR 160.103) in its role as an employer. (3-21-12)
- 168.** **PIC.** Pharmacist-in-charge. (3-21-12)
- 179.** **PMP.** Prescription Monitoring Program. (3-21-12)
- 1820.** **Prepackaging.** The act of transferring a drug, manually or using an automated system, from a manufacturer's original container to another container prior to receiving a prescription drug order. (3-21-12)
- 1921.** **Prescriber.** An individual currently licensed, registered, or otherwise authorized to prescribe and administer drugs in the course of professional practice. (3-21-12)
- 202.** **Prescriber Drug Outlet.** A drug outlet in which prescription drugs or devices are dispensed directly to patients under the supervision of a prescriber, except where delivery is accomplished only through on-site administration or the provision of drug samples. (3-21-12)

~~2+3.~~ **Purple Book.** The list of licensed biological products with reference product exclusivity and biosimilarity or interchangeability evaluations published by the FDA under the Public Health Service Act. (4-11-15)

~~224.~~ **Readily Retrievable.** Records are considered readily retrievable if they are able to be completely and legibly produced upon request within seventy-two (72) hours. (3-21-12)

~~235.~~ **Reconstitution.** The process of adding a diluent to a powdered medication to prepare a solution or suspension, according to the product's labeling or the manufacturer's instructions. (3-25-16)

~~246.~~ **Relative Contraindication.** A condition that renders a particular treatment or procedure inadvisable, but not prohibitive. (3-21-12)

~~257.~~ **Remote Dispensing Site.** A licensed pharmacy staffed by one or more certified technicians at which telepharmacy services are provided through a supervising pharmacy. (3-21-12)

~~268.~~ **Remote Office Location.** A secured area that is restricted to authorized personnel, adequately protects private health information, and shares a secure common electronic file or a private, encrypted connection with a pharmacy, from which a pharmacist who is contracted or employed by a central drug outlet performs centralized pharmacy services. (7-1-13)

~~279.~~ **Retail Non-Pharmacy Drug Outlet.** A retail outlet that sells non-prescription drugs or devices that is not a pharmacy. (3-21-12)

~~2830.~~ **Retail Pharmacy.** A community or other pharmacy that sells prescription drugs at retail and is open to the public for business. (3-21-12)

~~2931.~~ **R.N.** Registered nurse. (3-21-12)

(BREAK IN CONTINUITY OF SECTIONS)

032. PHARMACIST LICENSURE EXAMINATIONS.

Qualified applicants may sit for and to obtain licensure must pass the NAPLEX and the MPJE in accordance with NABP standards. A candidate who fails the NAPLEX three (3) times must complete at least thirty (30) hours of continuing education accredited by ACPE-accredited provider prior to being eligible to sit for each subsequent reexamination. (~~3-21-12~~)()

033. PHARMACIST LICENSURE BY RECIPROCITY.

An applicant for pharmacist licensure by reciprocity must satisfy the requirements of Section 54-1723, Idaho Code, and this rule to obtain an Idaho license. ~~The Board will issue a reciprocal license only to a~~ An applicant whose pharmacist licensure in good standing is currently restricted by a licensing entity in another state at the time of application and issuance of the Idaho license must appear before the Board to petition for licensure by reciprocity. (~~3-21-12~~)()

01. Transfer Application. The applicant must submit a preliminary application for licensure transfer through NABP. (3-21-12)

02. MPJE. The applicant must pass the Idaho-based MPJE. (3-21-12)

03. Intern Hours. An applicant not actively engaged in the practice of pharmacy during the year preceding the date of application may also be required to complete up to forty (40) intern hours for each year away from the practice of pharmacy. (3-21-12)

(BREAK IN CONTINUITY OF SECTIONS)

116. PRESCRIPTION DRUG ORDER: REFILLS.

01. Refill Authorization. A prescription drug order may be refilled when permitted by state and federal laws and only as specifically authorized by the prescriber. (3-21-12)

a. A pharmacist, utilizing his best professional judgment, may dispense a prescription drug that is not a controlled substance up to the total amount authorized by the prescriber including refills. (3-21-12)

b. Refills exceeding those authorized by the prescriber on the original prescription drug order may only be authorized through issuance of a new and separate prescription drug order, except that upon patient request, a pharmacist may extend a maintenance drug, other than a controlled drug, compounded drug, or biological product, for the limited quantity necessary to coordinate a patient's refills in a medication synchronization program. ~~(3-21-12)~~()

02. Emergency Prescription Refills. A pharmacist may refill a prescription for a patient when: (3-25-16)

a. The prescriber is not available for authorization if, in the professional judgment of the pharmacist, a situation exists that threatens the health or safety of the patient should the prescription not be refilled. Only sufficient medication may be provided, consistent with the dosage instructions, to maintain the prescribed treatment until, at the earliest possible opportunity, the issuing or an alternative prescriber is contacted for further renewal instructions. (3-25-16)

b. Upon the declaration of a national, state, or local emergency by the President of the United States, the Governor of the State of Idaho, or by any other person with legal authority to declare an emergency, a pharmacist may dispense a refill of a prescription drug to an affected patient, not to exceed a thirty (30)-day supply if, in the pharmacist's professional judgment, the prescription drug is essential to the patient's health or continuation of therapy. (3-25-16)

(BREAK IN CONTINUITY OF SECTIONS)

142. PARENTERAL ADMIXTURE LABELING.

If one or more drugs are added to a parenteral admixture the admixture's container must include a distinctive, supplementary label with at least the following information: (3-21-12)

01. Ingredient Information. The name, amount, strength, and if applicable, the concentration of the drug additive and the base solution or diluent; (3-21-12)

02. Date and Time. The date and time of the addition, or alternatively, the beyond use date and time; ~~(3-21-12)~~()

03. Identification. The initials or other unique identifier of the pharmacist or preparing prescriber responsible for its accuracy; (4-4-13)

04. Prescribed Administration Regimen. The rate or appropriate route of administration or both, as applicable; and (3-21-12)

05. Special Instructions. Any special handling, storage, or device-specific instructions. (3-21-12)

143. PREPACKAGED PRODUCT LABELING.

The containers of prepackaged drugs prepared for ADS systems or other authorized uses must include a label with at least the following information: (3-21-12)

01. Drug Name and Strength. The name and strength of the drug; (3-21-12)

- 02. Expiration Date.** An expiration date that is the lesser of: (3-21-12)
- a.** The manufacturer's original expiration date; (3-21-12)
 - b.** One (1) year from the date the drug is prepackaged; or (3-21-12)
 - c.** A shorter period if warranted (A prepackaged drug returned unopened from an institutional facility and again prepackaged must be labeled with the expiration date used for the initial prepackaging.); (3-21-12)
- 03. Conditional Information.** If not maintained in ~~the a separate records of the pharmacy~~, the manufacturer's name and lot number and the identity of the pharmacist or provider responsible for the prepackaging. ~~(3-21-12)~~ ()

(BREAK IN CONTINUITY OF SECTIONS)

200. CONTROLLED SUBSTANCES: POSITIVE IDENTIFICATION REQUIRED.

A potential recipient of a controlled substance must first be positively identified or the controlled substance must not be dispensed. (3-21-12)

01. Positive Identification Presumed. Positive identification is presumed and presentation of identification is not required if dispensing directly to the patient and if: (3-21-12)

- a.** The controlled substance will be paid for, in whole or in part, by an insurer; or (3-21-12)
- b.** The patient is being treated at an institutional facility or is housed in a correctional facility. (4-4-13)
- c.** The filled prescription is delivered to the patient's ~~residence~~ or patient's provider either by mail, common carrier, or an employee of the pharmacy. ~~(4-4-13)~~ ()

02. Personal Identification. Presentation of identification is also not required if the individual receiving the controlled substance is personally and positively known by a pharmacy or prescriber drug outlet staff member who is present and identifies the individual and the personal identification is documented by recording: (3-21-12)

- a.** The recipient's name (if other than the patient); (3-21-12)
- b.** A notation indicating that the recipient was known to the staff member; and (3-21-12)
- c.** The identity of the staff member making the personal identification. (3-21-12)

03. Acceptable Identification. The identification presented must include an unaltered photograph and signature and acceptable forms include: (3-20-14)

- a.** A valid U.S. state or U.S. military driver's license or identification card; (3-20-14)
- b.** A Western Hemisphere Travel Initiative (WHTI) compliant document (i.e., Enhanced Driver's License (EDL) or Nexus Air Card); (3-20-14)
- c.** A valid passport; and (3-20-14)
- d.** A U.S. passport card (PASS Card). (3-20-14)

04. Identification Documentation. Documentation of the recipient's identification must be permanently linked to the record of the dispensed controlled substance and must include: (3-21-12)

- a. A copy of the identification presented; or (3-21-12)
- b. A record that includes: (3-21-12)
 - i. The recipient's name; (3-21-12)
 - ii. A notation of the type of identification presented; (3-21-12)
 - iii. The government entity that issued the identification; and (3-20-14)
 - iv. The unique identification number. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

262. RESTRICTED RETURN OF DRUGS OR DEVICES.

Once removed from the premises from which it was dispensed, a drug or prescription device must only be accepted for return or destruction under the conditions permitted by this rule or pursuant to the Legend Drug Donation Act and rules. ~~(3-21-12)~~()

01. Qualifying Returns. ~~Unless dispensed in any manner inconsistent with the prescriber's instructions and returned for quarantine for destruction purposes only, a drug or prescription device that has been received from or delivered to the patient or the patient's representative is ineligible for return.~~ Drugs or devices that may qualify for return include: ~~(3-21-12)~~()

a. Those that were dispensed in a manner inconsistent with the prescriber's instructions may be returned for quarantine and destruction purposes only. ()

~~b.~~ Those intended for inpatients of an institutional facility that have been maintained in the custody and control of the institutional facility or dispensing pharmacy; and (3-21-12)

~~b.c.~~ That are liquid or in unit dose or unit-of-use packaging and, if a controlled substance, returned from a hospital daily delivery system. A hospital daily delivery system means a system under which a pharmacy dispenses no more than a twenty-four (24) hour supply for a drug order, or up to a seventy-two (72) hour supply for a drug order if warranted for good patient care; and ~~(3-21-12)~~()

~~d.~~ Those for which the following conditions are satisfied: (3-21-12)

i. The drug was delivered by the dispensing pharmacy directly to the institutional facility or its authorized agent and subsequently stored in a suitable drug storage area that is inaccessible to patients; (3-21-12)

ii. The drug is returned in an unopened manufacturer-sealed container or with other tamper-evident packaging intact; (3-21-12)

iii. In the professional judgment of the pharmacist, the safety and efficacy of the drug has not been compromised; and (3-21-12)

iv. A system is in place to track the restocked drug for purposes of a recall. (3-21-12)

02. Marking Ineligible Returns. Drugs or devices otherwise eligible for return that are or will become ineligible for any reason must be clearly marked "Not Eligible for Return" prior to leaving the institutional facility or upon discovery and before storing in an area with other eligible returns. (3-21-12)

03. Consulting Pharmacy and PIC Responsibilities. The pharmacy and its PIC are responsible for: (4-4-13)

- a. Consulting with an institutional facility from which returns will be accepted; (4-4-13)
- b. Ensuring that the institutional facility has an employee trained and knowledgeable in the proper storage, use, and administration of drugs and devices; (4-4-13)
- c. Reviewing, approving, and enforcing written protocols that will ensure compliance with the conditions necessary to allow returns; and (4-4-13)
- d. Storing a copy of the protocols, as well as the written approval thereof, in an immediately retrievable fashion. (4-4-13)

04. Collection for Destruction. A pharmacy registered with the DEA as a collector may collect controlled and non-controlled drugs for destruction in accordance with applicable federal law. ()

(BREAK IN CONTINUITY OF SECTIONS)

300. PIC: QUALIFICATIONS.

A pharmacist may neither be designated nor function as the PIC of ~~a more than two (2) pharmacies unless the designee spends a substantial part of the designee's working time each month at the pharmacy in which designated as the PIC.~~ (3-21-12)()

(BREAK IN CONTINUITY OF SECTIONS)

500. UNPROFESSIONAL CONDUCT.

The following acts or practices by a pharmacist, student pharmacist, or technician are declared to be specifically, but not by way of limitation, unprofessional conduct and conduct contrary to the public interest. (3-21-12)

01. Unethical Conduct. Conduct in the practice of pharmacy or in the operation of a pharmacy that may reduce the public confidence in the ability and integrity of the profession of pharmacy or endangers the public health, safety, and welfare. A violation of this section includes committing fraud, misrepresentation, negligence, concealment, or being involved in dishonest dealings, price fixing, or breaching the public trust with respect to the practice of pharmacy. (3-21-12)

02. Lack of Fitness. A lack of fitness for professional practice due to incompetency, personal habits, drug or alcohol dependence, physical or mental illness, or for any other cause that endangers public health, safety, or welfare. (3-21-12)

03. On-Duty Intoxication or Impairment. Intoxication, impairment, or consumption of alcohol or drugs while on duty, including break periods after which the individual is expected to return to work, or prior to reporting to work. (3-21-12)

04. Diversion of Drug Products and Devices. Supplying or diverting drugs, biologicals, and other medicines, substances, or devices legally sold in pharmacies that allows the circumvention of laws pertaining to the legal sale of these articles. (3-21-12)

05. Unlawful Possession or Use of Drugs. Possessing or using a controlled substance without a lawful prescription drug order. A failed drug test creates a rebuttable presumption of a violation of this rule. (3-21-12)

06. Prescription Drug Order Noncompliance. Failing to follow the instructions of the person writing, making, or ordering a prescription as to its refills, contents, or labeling except as provided in these rules. (4-4-13)

07. Failure to Confer. Failure to confer with the prescriber when necessary or appropriate or filling a prescription if necessary components of the prescription drug order are missing or questionable. (3-21-12)

08. Excessive Provision of Controlled Substances. Providing a clearly excessive amount of controlled substances. Evidentiary factors of a clearly excessive amount include, but are not limited to, the amount of controlled substances furnished and previous ordering patterns (including size and frequency of orders). (3-21-12)

09. Failure to Counsel or Offer Counseling. Failing to counsel or offer counseling, unless specifically exempted or refused. The failure to retain appropriate documentation evidencing compliance with patient counseling requirements creates a rebuttable presumption of a violation of this rule. (3-21-12)

10. Substandard, Misbranded, or Adulterated Products. Manufacturing, compounding, delivering, dispensing, or permitting to be manufactured, compounded, delivered, or dispensed substandard, misbranded, or adulterated drugs or preparations or those made using secret formulas. (3-21-12)

11. Prescriber Incentives. Allowing a commission or rebate to be paid, or personally paying a commission or rebate, to a person writing, making, or otherwise ordering a prescription. (3-21-12)

12. Exclusive Arrangements. Participation in a plan or agreement that compromises the quality or extent of professional services or limits access to provider facilities at the expense of public health or welfare. (3-21-12)

13. Failure to Report. Failing to report to the Board any violation of statutes or rules pertaining to the practice of pharmacy or any act that endangers the health, safety, or welfare of patients or the public. (3-21-12)

14. Failure to Report Medication Errors With Fatal Outcomes. Within two (2) business days of discovery, the PIC, pharmacy director, or pharmacist on duty must provide a brief notification to the Board of a fatality that is reasonably expected to have resulted from a medication error. ()

a. Reportable Events. A fatality is reportable if it is suspected to be related to an error in medication use process, including product labeling, packaging, compounding, dispensing, or direct administration of a medication. ()

b. Follow-up Reporting Requirements. The pharmacy director must provide a copy of the official incident report filed with an accrediting body or government agency to the Board within two (2) business days of submission to the other entity. ()

145. Failure to Follow Board Order. Failure to follow an order of the Board. (3-21-12)

(BREAK IN CONTINUITY OF SECTIONS)

503. PRESCRIPTION DELIVERY RESTRICTIONS.

A pharmacist must not participate in any arrangement or agreement whereby filled prescriptions may be left at, picked up from, accepted by, or delivered to any place of business not registered as a pharmacy except that a pharmacist or a pharmacy, by means of its agent, may deliver filled prescriptions to the following: ()

01. Patient. To the patient, or the patient's residence, the hospital or other institutional facility in which the patient is convalescing, the correctional facility in which a patient is housed, ~~or if a non-controlled substance,~~ or ()

02. Provider. To the patient's licensed or registered healthcare provider, ~~except if a controlled substance not intended for direct administration.~~ ~~(4-4-13)~~()

(BREAK IN CONTINUITY OF SECTIONS)

603. PHARMACY REFERENCES.

- Required pharmacy references include the latest hard copy or electronic editions and supplements of the following: (3-21-12)
- 01. **Pharmacy Laws and Rules.** Idaho Pharmacy Laws and Rules. (3-21-12)
 - ~~02.~~ ~~**DEA Manual.** DEA Pharmacist's Manual.~~ ()
 - ~~023.~~ ~~**Current Pharmacy References.** One (1) of the following current pharmacy references:~~ (3-21-12)
 - ~~a.~~ ~~Facts and Comparisons;~~ (3-21-12)
 - ~~b.~~ ~~Clinical Pharmacology;~~ (3-21-12)
 - ~~c.~~ ~~Micromedex; or~~ (3-21-12)
 - ~~d.~~ ~~Lexicomp.~~ (3-21-12)
 - ~~03.~~ ~~**Additional Current Pharmacy Reference.** One (1) additional~~ **At least two (2)** current pharmacy references relevant to the practice setting. (3-21-12)()

(BREAK IN CONTINUITY OF SECTIONS)

605. PHARMACY SECURITY.

A pharmacy must be constructed and equipped with adequate security to protect its equipment, records, and supply of drugs, devices, and other restricted sale items from unauthorized access, acquisition, or use. Failure to provide effective controls to prevent unauthorized access, acquisition, or use constitutes grounds for discipline to the PIC and the facility. New construction or a remodeled pharmacy must meet the following minimum security requirements: (4-11-15)()

- 01. **Alarm.** At least while closed an alarm or other comparable monitoring system is required. (4-11-15)
- ~~02.~~ ~~**Walls.** Pharmacy walls must extend to the roof or the pharmacy must be similarly secured from unauthorized entry.~~ (4-11-15)
- ~~03.~~ ~~**Doors.** Solid core or metal doors are required.~~ (4-11-15)
- ~~04.~~ ~~**Hinges and Locks.** Doors and other access points must be constructed in a manner that the hinge hardware is tamper-proof when closed.~~ (4-11-15)
- ~~052.~~ ~~**Differential Hours.** When ~~closed for~~ **located in a larger** business **establishment**, a pharmacy **that is closed** must be:~~ (4-11-15)
 - ~~a.~~ ~~Completely enclosed in a manner sufficient to provide adequate security; or.~~ (4-11-15)
 - ~~b.~~ ~~Located within a larger business establishment that is also closed. In such cases, the establishment must meet these minimum security requirements, and no person is allowed entry to the establishment unless a pharmacist is present.~~ (4-11-15)
- 06. **Drop Box.** If used, a “drop box” or “mail slot” allowing delivery of prescription drug orders to the pharmacy during hours closed must be appropriately secured against theft, and the pharmacy hours must be prominently visible to the person depositing the prescription drug order. Prescriptions must not be accepted for delivery to the pharmacy or for depositing in the drop box by non-pharmacy employees of a retail establishment.

(4-11-15)

(BREAK IN CONTINUITY OF SECTIONS)

637. INSTITUTIONAL FACILITY: EMERGENCY OUTPATIENT DRUG DELIVERY BY HOSPITAL EMERGENCY ROOMS.

Drugs may be delivered by an RN to outpatients being treated in a hospital emergency room as follows: (4-4-13)

01. Prerequisites: (4-4-13)

a. In the presence of a prescriber, acting as an agent of that prescriber, or outside the presence of a prescriber, when there is no prescriber present in the hospital in accordance with applicable state and federal law; (4-4-13)

b. Pursuant to a valid drug order issued by a prescriber; and ~~(4-4-13)~~()

~~e.~~ *When no pharmacist is on duty in the community; and* ~~(4-4-13)~~

~~d.~~ When drugs are stored and accessed in accordance with applicable laws and rules. (4-4-13)

02. Limitations. ~~No more than one (1) prepackaged container of the same drug may be delivered unless more than one (1) package is required to sustain the patient until the first available pharmacist is on duty in the community except that the full course of therapy for anti-infective medications may be provided~~ Dispensing must be in limited quantities and for a reasonable time duration as a continuation of or supplemental to treatment that is administered in the emergency room. ~~(3-21-12)~~()

03. Documentation. Delivery must be documented as required by these rules for institutional facility emergency drug access. (4-4-13)

04. Labeling. The institutional pharmacy must prepackage and affix a label to the container with the information required by the standard prescription drug labeling rules, except that blank spaces may be left for the names of the patient and prescriber and directions for use. (4-4-13)

(BREAK IN CONTINUITY OF SECTIONS)

650. INSTITUTIONAL FACILITY: CENTRALIZED PHARMACY SERVICES.

In addition to the rules for centralized pharmacy services, an institutional facility that centralizes pharmacy services must be in compliance with the following rules: (7-1-13)

01. Limited Purpose. Centralized pharmacy services are for the limited purpose of ensuring that drugs or devices are attainable to meet the immediate needs of patients and residents of the institutional facility or if the originating pharmacy cannot provide services for the institutional facility on an ongoing basis Centralized product distribution is permissible if performed by a centralized pharmacy under common ownership with the institutional facility, and if such distribution is within the limits of other applicable state and federal laws; ~~(7-1-13)~~()

02. Policies and Procedures. An institutional pharmacy and its contracted central drug outlet or central pharmacist that provides centralized pharmacy services must adopt policies and procedures and retain documentation that evidences at least the following as applicable: ~~(7-1-13)~~()

a. A copy of the contract if required by these rules; (7-1-13)

b. Identification of the directors or PICs; (7-1-13)

c. The protocol for ensuring that the central drug outlet maintains sufficient Board licensed or registered pharmacists to meet the centralized pharmacy services needs of the institutional facility; (7-1-13)

d. The protocol for accessing prescription drugs in the institutional pharmacy contracting with the central drug outlet or central pharmacist and for maintaining the security of the drugs; (7-1-13)

e. Essential information utilized by the institutional facility, such as its formulary, standard drip concentrations, standard medication administration times, standardized or protocol orders, pharmacokinetic dosing policies, and renal dosing policies, as well as protocols for ensuring timely and complete communication of changes to the information; and (7-1-13)

f. The protocol for the central drug outlet or central pharmacist to perform a review of the patient's profile, including but not limited to performing a prospective drug review. (7-1-13)

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1605

NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 3, 2016.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 37-2702 and 37-2715, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule

The substance U-47700 listed within this temporary rule is being abused in Idaho and is reportedly linked to at least two deaths in the state. The substance's inclusion into the list of Schedule I controlled substances is necessary to protect the public health, safety, and welfare. The substances listed within this temporary rule pass the Schedule I test found in Section 37-2704, Idaho Code, and this temporary rule would render the substances found within it Schedule I substances.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The substance U-47700 listed within this temporary rule is being abused in Idaho and is reportedly linked to at least two deaths in the state. The substance's inclusion into the list of Schedule I controlled substances is necessary to protect the public health, safety, and welfare.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Alex Adams, Executive Director, at (208) 334-2356.

DATED this 16th Day of August, 2016.

Alex Adams, Pharm D, MPH
Executive Director
Board of Pharmacy
1199 W. Shoreline Lane, Ste. 303
P. O. Box 83720, Boise, ID 83720-0067
Phone: (208) 334-2356 / Fax: (208) 334-3536

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 27-0101-1605
(Only Those Sections With Amendments Are Shown.)**

211. CONTROLLED SUBSTANCES: SCHEDULE I.

Unless specifically excepted or unless listed in another schedule, U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methyl-benzamide), its derivatives, salts, isomers, and salts of isomers with similar chemical structure shall be listed in Schedule I, under Article II, Title 37, Chapter 27, Idaho Code. (8-3-16)T

21+2. -- 219. (RESERVED)

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

31.46.02 - RULES FOR TELECOMMUNICATIONS RELAY SERVICES (TRS)

DOCKET NO. 31-4602-1602

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 61-1306, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

The Idaho Public Utilities Commission seeks to amend its Telecommunications Relay Services (TRS) Rules. TRS are services that enable a communications-impaired person to send and receive messages to and from a non-communications-impaired person, using specialized telecommunications equipment. The Commission contracts with a TRS Administrator that requests and evaluates proposals from TRS providers that wish to enter a contract to be a TRS provider for Idaho.

Proposed changes to the TRS Rules accomplish four objectives: (1) delete obsolete references; (2) correct misspellings and outdated e-mail addresses; (3) improve the clarity or readability of rules; and (4) simplify the Administrator's process for requesting proposals from TRS providers. As to the fourth objective, the proposed changes reduce the number of members on the advisory committee that assists the Administrator in assessing TRS providers' responses to the requests, and that reviews the services provided by the selected provider.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Volume 16-7, page 79](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Grace Seaman at 208-334-0352.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 4th Day of August, 2016.

Jean D. Jewell, Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074
Phone: (208) 334-0338 / Fax: (208) 334-3762

Street address for express delivery:

472 W Washington
Boise, Idaho 83702-5983

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 31-4602-1602
(Only Those Sections With Amendments Are Shown.)

005. DEFINITIONS (RULE 5).

As used in these rules:

(7-1-93)

01. Administrator. “Administrator” means the person with whom the Idaho Public Utilities Commission contracts to administer the program for delivery of telecommunications relay services. See Section 61-1302(1), Idaho Code. (7-1-93)

02. American Sign Language (ASL). “American sign language” means a visual language based on hand shape, position, movement, and orientation of the hands in relation to each other and the body. See 47 C.F.R. 64.601(1). (7-1-93)

03. ASCII. “ASCII” is an acronym for American Standard Code for Information Interexchange, which employs an eight-bit code and can operate at any standard transmission baud rate including 300, 1200, 2400, and higher. See 47 C.F.R. 64.601(2). (7-1-93)

04. Baudot. “Baudot” means a seven (7) bit code, only five (5) of which are information bits. Baudot was used by some text telephones to communicate with each other at a forty-five point five (45.5) baud rate. See 47 C.F.R. 64.601(3). (7-1-93)

05. Communications Assistant (CA). “Communications assistant (CA)” means a person who transliterates conversation from text to voice and from voice to text between two (2) end users of TRS. CAs are also known by terms such as “TRS operator” or “TDD operator.” See 47 C.F.R. 64.601(5). (7-1-93)

06. Communications Impaired. “Communications impaired” means individuals who are hearing-impaired or speech-impaired as defined in Title IV, Section 401, Americans with Disabilities Act of 1990, Public Law 101-336, 47 U.S.C. 225, or regulations promulgated pursuant to that Act, in particular, 47 C.F.R. 64.601 et seq. See Section 61-1302(3), Idaho Code. (7-1-93)

07. Hearing Carry Over (HCO). “Hearing carry over (HCO)” means a reduced form of TRS where the person with a speech disability is able to listen to the other end user and, in reply, the CA speaks the text as typed by the person with the speech disability. The CA does not type any conversation. See 47 C.F.R. 64.601(6). (7-1-93)

08. Local Exchange Company. “Local exchange company” means a telephone corporation that provides access lines to residential and business customers with the associated transmission of two-way interactive switched voice communication within a geographic area where basic local exchange rates rather than message telecommunications service rates apply. See Section 61-1302(4), Idaho Code. (7-1-93)

09. Message Telecommunications Service (MTS). “Message telecommunications service (MTS)” means the transmission of two-way interactive switched voice communication between local exchange areas for which charges are made on a per-unit basis, not including Wide Area Telecommunications Service (WATS) (or its equivalent) or individually negotiated contracts for telecommunication services. See Section 62-603(6), Idaho Code, as adopted by reference in Section 61-1302(5), Idaho Code. (7-1-93)

10. Program. “Program” means the effort directed by the administrator to establish and operate an Idaho system to provide telecommunications relay services. See Section 61-1302(5), Idaho Code. (7-1-93)

11. Telephone Corporation. “Telephone corporation” means every corporation or person, their lessees, trustees, or receivers appointed by any court whatsoever, providing telecommunication services for compensation within this State, except telephone corporations solely providing radio paging, mobile radio telecommunications services, answering services (including computerized or otherwise automated answering or

voice message services), or one-way transmission to subscribers of video programming, or other programming service, and subscriber interaction, if any, that is required for the selection of video programming or other programming service. See Section 62-603(914), Idaho Code, as adopted by reference in Section 61-1302(7), Idaho Code. (7-1-93)()

12. Telecommunications Relay Services (TRS). “Telecommunications relay services (TRS)” mean services through which a communications-impaired person, using specialized telecommunications equipment, may send and receive messages to and from a non-communications-impaired person whose telephone is not equipped with specialized telecommunications equipment and through which a non-communications-impaired person may, by using voice communication, send and receive messages to and from a communications-impaired person. This term includes services that enable two-way communication between an individual who uses a text telephone or other non-voice terminal device and an individual who does not use such a device. TRS supersedes the terms “dual party relay system,” “message relay services,” and “TDD relay.” See Section 61-1302(8), Idaho Code, and 47 C.F.R. 64.601(7). (7-1-93)

13. Text Telephone (TT). “Text telephone (TT)” means a machine that employs graphic communication in the transmission of coded signals through a wire or radio communications system. TT supersedes the term “TDD” or “telecommunications device for the deaf.” See 47 C.F.R. 64.601(a). (7-1-93)

14. Universal Service Fund (USF). “Universal service fund (USF)” means the fund established by the Commission pursuant to Section 62-610, Idaho Code, and this Commission’s rules codified at IDAPA 31.46.01.000, et seq. The USF has an administrator whose duties are set forth by this Commission’s rules and this Commission’s contract with the administrator. See IDAPA 31.46.01.102. (7-1-93)

15. Voice Carry Over (VCO). “Voice carry over (VCO)” means a reduced form of TRS where the person with the hearing disability is able to speak directly to the other end-user. The CA types responses back to the person with the hearing disability. The CA does not speak on behalf of the TT users. See 47 C.F.R. 64.601(9). (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

101. REQUIREMENTS OF THE TRS PROGRAM (RULE 101).

01. Operational Requirements. State or federal law imposes the following operational requirements upon a TRS provider: (7-1-93)

a. TRS must be provided twenty-four (24) hours per day, seven (7) days per week, every day of the year. See 47 U.S.C. 225(d)(1)(C); 47 C.F.R. 64.604(b)(4); Section 61-1303(2)(a), Idaho Code. (7-1-93)

b. The TRS provider shall not refuse calls or limit the length of calls using TRS, except that providers of TRS may decline to complete a call because credit authorization has been denied. See 47 U.S.C. 225(d)(1)(E); 47 C.F.R. 64.604(a)(3). (7-1-93)

c. The TRS provider must be capable of communicating with text telephone users using either the ASCII or Baudot format, at any speed generally in use. See 47 C.F.R. 64.604(b)(1). (7-1-93)

d. Except during network failure, the TRS provider shall answer eighty-five percent (85%) of all calls within ten (10) seconds, and no more than thirty (30) seconds shall elapse between receipt of dialing information and the dialing of a requested number. The TRS provider shall include adequate staffing to provide callers with efficient access under projected calling volumes so that the probability of a busy response due to unavailability of communications assistants will be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network. See 47 C.F.R. 64.604(b)(2). (7-1-93)

e. The TRS provider shall give TRS users access through the TRS to their chosen inter-exchange carrier and to all other operator services to the same extent that such access is provided to voice users. See 47 C.F.R.

64.604(b)(3).

(7-1-93)()

02. Communications Assistants' Handling of Calls. TRS providers must require that communications assistants (CAs) be sufficiently trained to effectively meet the specialized communication needs of individuals with hearing and speech disabilities and that communications assistants have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette. Communications assistants are prohibited from disclosing the content of any relayed conversation regardless of content and from keeping records of the content of any conversation beyond the duration of a call. Communications assistants are prohibited from intentionally altering a relayed conversation and must relay all conversations verbatim unless the relay user specifically requests summarization. Communications assistants must relay all messages promptly and accurately. See 47 U.S.C. 225(d)(1)(F), -(G); 47 C.F.R. 64.604(a)(1), -(2); Section 61-1303(2)(b), and -(c), Idaho Code. (7-1-93)

03. Rates. The users of TRS shall pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to the point of termination. In particular, this means that when a telephone call from one customer to another would not incur long-distance charges if the call were placed directly without use of the TRS system, then there will be no long-distance charge for that call when the TRS system is used, even if the TRS provider is located in a telephone exchange that would ordinarily require a long-distance call to reach the calling or answering party. See 47 U.S.C. 225(d)(1)(D); 47 C.F.R. 64.604(c)(3). (7-1-93)

04. Other Standards and Services. The standards and services required for TRS providers by this rule are minimum standards and services. The request for proposal for TRS services may require additional standards or services, or if the request for proposals does not, the selection of the TRS provider may take into account the ability of the TRS provider to meet standards or provide services in addition to the minimum standards or services required by this rule. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

103. ESTABLISHMENT OF TELEPHONE INDUSTRY ADVISORY COMMITTEE (RULE 103).

01. Establishment of Committee. The Commission hereby establishes a telephone industry advisory committee with which the administrator shall consult in ~~the formulation of a Request for Proposals (RFP) for telecommunications relay services (TRS)~~, the assessment of responses to the RFP, and ~~the review of the quality of services provided.~~ The industry committee shall have ~~seven~~ **three (3)** members, who shall be representatives of: (7-1-93)()

a. ~~U-S WEST Communications, Inc., (the largest provider of local exchange and intraLATA MTS services in the southern Idaho LATA and in the lower Clearwater drainage associated with the Spokane LATA), which is hereby appointed to a permanent seat on the committee;~~ (7-1-93)()

b. ~~GTE Northwest Incorporated, (the provider of local exchange service and intraLATA MTS in northern Idaho), which is hereby appointed to a permanent seat on the committee;~~ (7-1-93)

eb. ~~Two (2) An independent telephone companies~~ **providing local exchange services and a member of to be appointed from nominees recommended by** the Idaho Telephone Association (the trade group that includes independent telephone companies in Idaho); **and** (7-1-93)()

dc. ~~AT&T Communications of the Mountain States, Inc. (the principal interLATA MTS carrier in Idaho), which is hereby appointed to a permanent seat on the Committee;~~ **The Idaho State Council for the Deaf and Hard of Hearing, or the State Council on Developmental Disabilities.** (7-1-93)()

e. ~~MCI Telecommunications Corporation (an MTS carrier that has expressed great interest in the TRS rulemaking), which is hereby appointed to a permanent seat; and~~ (7-1-93)

~~f. One other MTS carrier that is not a local exchange company (e.g., Sprint, Northwest Telco).~~
(7-1-93)

104. CONSULTATION WITH REPRESENTATIVES OF THE HEARING-IMPAIRED AND THE SPEECH-IMPAIRED (RULE 104).

It shall be the duty of the administrator to consult with representatives of the Idaho State Council for the Deaf and Hard of Hearing and of the Idaho State Council on Developmental Disabilities ~~before formulating the RFP for telecommunications relay services. The administrator shall also solicit comments from the general hearing impaired and speech impaired communities before issuing the RFP for TRS. Before issuing the RFP, the administrator shall issue a draft RFP and a written report reviewing the recommendations of the Idaho State Council for the Deaf and Hard of Hearing, of the Idaho State Council on Developmental Disabilities and of the general public, which shall explain why individual recommendations were or were not adopted, stating with particularity technical or economic reasons underlying the administrator's decisions.~~
(7-1-93)()

105. REQUEST FOR PROPOSALS (RFP) -- SELECTION OF TRS PROVIDER (RULE 105).

01. Formulation of RFP and Submission to the Commission. The administrator, ~~following consultation as provided in Rules 103 and 104,~~ shall formulate and submit a request for proposals (RFP) for the provision of TRS to the Commission. The Commission shall review the RFP and return it to the administrator, with comments or changes that Commission finds appropriate, and direct the administrator to issue the RFP.
(7-1-93)()

02. Requirements of the RFP. The RFP issued by the administrator must request all companies responding to the RFP to comply with all requirements of state and federal law. See Rule 101. In addition, the RFP may require those responding to the RFP to meet additional requirements contained in the RFP or ask those responding to list additional standards they could meet or additional services that they could provide above the minimums required by state and federal law.
(7-1-93)

03. Timetable for Decision. The administrator shall ~~select~~ develop a timetable for formulation of the RFP, its review by the Commission, advertisement of the RFP for response, review of proposals submitted in response to the RFP, and final decision selecting a TRS provider that will complete the process of selection of the TRS provider ~~no later than September 1, 1992~~ in sufficient time to maintain uninterrupted relay services.
(7-1-93)()

106. STATE CERTIFICATION—~~ANNUAL REPORTS~~ (RULE 106).

~~As soon as practicable after September 1, 1992, and no later than September 21, 1992, t~~The administrator shall submit a report to ~~the Governor or his designee, to~~ the Idaho Public Utilities Commission, to the Idaho State Council for the Deaf and Hard of Hearing, and to the Idaho State Council on Developmental Disabilities ~~describing the program that will be put in place under the accepted RFP. The purpose of this report will be to allow the Governor or his designee to submit a report to~~ as necessary so that the Commission may file the necessary document with the Federal Communications Commission on or before October 1, 1992, requesting certification of the Idaho TRS in order to allow any Idaho intrastate telephone corporation to comply with its obligations under federal law to provide TRS by contracting with the Idaho TRS provider. ~~The administrator shall in succeeding years submit annual reports to the Commission on or before September 1 reviewing the adequacy of the TRS, recommending necessary changes to the program, recommending a budget for the following year, and otherwise addressing issues concerning the TRS that should be brought to the public's and this Commission's attention.~~
(7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

202. THE COMMISSION'S DETERMINATION OF FUNDING LEVELS (RULE 202).

01. Issuance of Commission Order. ~~On or before November 1, 1992, the Commission shall issue an order in response to the administrator's contract with the TRS provider that will establish funding levels to be in effect for the initiation of TRS service. Before June 30, 1993, the Commission may issue an order or orders adjusting the initial funding levels as necessary in light of experience with the initial months of service. Thereafter, o~~On or

before March 1 of each succeeding year, the Commission shall issue an order in response to the administrator's annual report that will establish funding levels to be in effect for the twelve months beginning April 1 following issuance of the order. The Commission may issue an order revising funding levels at other times in order to preserve the integrity of the fund. (7-1-93)()

02. Findings and Directives of the Order Prescribing Funding Levels. All orders prescribing funding levels issued pursuant to Rule 202.01 shall contain the following: (7-1-93)

a. The Commission's finding of the funding target for the TRS program for the twelve (12) months beginning April 1 (or other appropriate time, if the order is not issued to be in effect for twelve (12) months beginning April 1), based upon anticipated expenses of operation of the TRS program for those twelve (12) months and prudent management of minimum fund balances; and (7-1-93)

b. The Commission's findings of the fair, just and reasonable allocations of the twelve (12) month funding target that will come from telephone corporations providing local exchange service and that will come from telephone corporations providing MTS/WATS services, respectively. (7-1-93)

03. Calculation of Funding Levels. Telephone corporations providing local exchange service in Idaho and telephone corporations providing intrastate MTS/WATS services in Idaho must contribute to the TRS fund as follows: (7-1-93)

a. Each telephone corporation providing local exchange service in Idaho shall file a monthly report, due on or before the first of each month, stating the number of local access lines it has for that month. The data used to determine a local exchange company's number of local access lines shall be the same as that used for monthly reporting to the administrator of the Universal Service Fund (USF) for the monthly USF report. See USF Rule 201.01, IDAPA 31.46.01.201.01. (7-1-93)

b. Each telephone corporation providing intrastate MTS/WATS service in Idaho is required to contribute to TRS funding in proportion to the number of its intrastate MTS/WATS billed minutes, provided that those telephone corporations providing intrastate MTS/WATS service in Idaho that use the services of another telephone corporation for the actual transportation of calls and that have been granted exemptions from contributions to the Universal Service Fund by the Commission, the USF administrator, or the Commission staff are also granted exemptions from contributions to the TRS fund by operation of this rule. The USF administrator shall provide the TRS administrator with a list of all telephone corporations exempted from contributing to the USF and all changes to that list whenever they are made. The data determining an MTS/WATS company's number of intrastate MTS/WATS billed minutes for a given monthly report due on or before the first of the month shall be the same provided to the administrator of the Universal Service Fund (USF) for the USF report also due on or before the first of that month. See USF Rule 201.02, IDAPA 31.46.02.201.02. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

205. THE ADMINISTRATOR'S ANNUAL REPORT TO THE COMMISSION (RULE 205).

01. Report of Existing Financial Conditions. ~~Beginning in 1994, o~~ On or before February 15 ~~of each year,~~ the administrator shall ~~annually~~ submit a report to the Commission providing the following information: (7-1-93)()

a. A statement of the TRS fund's income in the previous calendar year from remittances by local exchange companies and from remittances by MTS/WATS companies, and the total, and a statement of all other income (including interest), gifts, contributions, etc., for the calendar year; (7-1-93)

b. Actual TRS fund balances at the end of the quarters ending in March, June, September and December of the preceding calendar year; and (7-1-93)

c. The statewide line count for local service lines on January 1 of that year and January 1 of the

previous year, and the total number of MTS/WATS minutes reported to the TRS administrator for the year ending the previous December 31 and the year ending the December 31 before that. ~~The TRS administrator's initial annual report in 1994 shall include all the periods from the permanent TRS administrator's first receipt of any TRS funds, either from the temporary administrator or from telephone corporations. In addition, the TRS administrator may obtain from the USF administrator any information concerning calendar year 1992 that the TRS administrator does not have.~~ (7-1-93)()

02. Report on Use of the TRS Program. The administrator shall also report, based upon information to be supplied by the TRS provider, upon use of the TRS program in the previous calendar year. The administrator's contract with the TRS provider shall require appropriate data collection by the TRS provider, including, but not limited to, the number of calls handled by the provider, with breakdown showing whether the calls are local or MTS, intrastate or interstate MTS, total intrastate and interstate MTS minutes, the hours when calls are made (e.g., from 8 a.m. to 5 p.m., from 5 p.m. to 11 p.m., from 11 p.m. to 8 a.m.), days of the week when calls are made, and patterns of increased or decreased usage of the TRS program from month to month for the previous calendar year. The TRS provider shall provide this information by month to the TRS administrator on dates to be specified by the administrator. (7-1-93)

03. Recommendation. The administrator shall report the TRS fund's expected surplus or deficit for the twelve months beginning April 1 based upon the assumption that the TRS funding levels will not change. The administrator shall also report whether this surplus or deficit will alter the expected fund balance during the twelve (12) months beginning April 1 following the report significantly enough to recommend that TRS funding levels be increased or decreased. If the administrator believes that the TRS funding levels should be increased or decreased, the administrator shall recommend a target balance for the TRS fund for the end of the twelve (12) months beginning April 1 following this report and the amount by which TRS fund remittances should be increased or decreased beginning April 1 to meet this target. (7-1-93)

04. Review by Commission Staff. On or before March 1 the Commission Staff shall review the calculations and recommendations of the administrator and call any errors or omissions to the attention of the administrator and the Commission. (7-1-93)

05. Report a Public Record -- Workpapers Exempted Trade Secrets. The report of the administrator showing statewide totals for local service and MTS/WATS minutes, inventories of service lines, and other information not identifying a telephone corporation or a customer is a public record available for inspection, examination and copying under Section 74-102, Idaho Code. Workpapers accompanying the report (including those produced by the USF administrator) showing individual telephone corporation's data for Title 62 services and individual telephone corporation's reports to the TRS or USF administrators showing data for their Title 62 services, together with any data for Title 61 services protected from disclosure under applicable Trade Secret Law, are trade secrets exempt from disclosure under Section 74-107(1), Idaho Code. (7-1-93)

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105A and 63-802, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 625: Homeowners Exemption on Occupancy Tax Roll – This rule eliminates the requirement for the taxpayer to file more than one application in order to receive the homeowner’s exemption.

Rule 631: Tax Exemption for Investment in New Plant and Building Facilities Upon County Commissioners’ Approval – Added to this rule are examples demonstrating that the land and existing buildings are not eligible for the property tax exemption found in Idaho Code 63-602NN. The proposed added examples are identical to those developed by the Idaho Department of Commerce for inclusion in their 63-602NN Users Guide.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 4, 2016 Idaho Administrative Bulletin, [Volume 16-5, pages 58-59](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest, (208) 334-7742, alan.dornfest@tax.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 5th Day of August, 2016.

Alan Dornfest
Tax Policy Supervisor
State Tax Commission
P.O. Box 36, Boise, ID 83722-0410
(208) 334-7742

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1601
(Only Those Sections With Amendments Are Shown.)**

625. HOMEOWNERS EXEMPTION ON OCCUPANCY TAX ROLL (RULE 625).
Sections 63-317 and 63-602G, Idaho Code

01. Eligibility for Multiple Exemptions. Obtaining the exemption in Section 63-602G, Idaho Code, will not preclude a property owner from eligibility for the exemption granted by Section 63-317, Idaho Code. More than one (1) property may be eligible for this exemption provided that ownership and occupancy of the properties occurs at different times during the year and ~~that each~~ application is made on the owner's primary residence. ~~(3-30-01)~~()

02. Separate Applications. The application for this exemption ~~shall not~~ may substitute for the application required by Section 63-602G, Idaho Code. ~~(3-30-01)~~()

(BREAK IN CONTINUITY OF SECTIONS)

631. TAX EXEMPTION FOR INVESTMENT IN NEW PLANT AND BUILDING FACILITIES UPON COUNTY COMMISSIONERS' APPROVAL (RULE 631).
Section 63-602NN, Idaho Code

01. The Investment in Plant. In order to qualify for this exemption a taxpayer must invest at least three million dollars (\$3,000,000) in new plant ~~and or~~ building facilities excluding the investment in land. See Section 63-602NN, Idaho Code. ~~(5-8-09)~~()

02. The Exemption. The board of county commissioners may exempt all or a portion of the market value of the defined project for a period of up to five (5) years. Land is not to be included in this exemption. See Section 63-602NN(2), Idaho Code. ~~(5-8-09)~~()

03. Examples. The exemption applies only to new plant or new building facilities in which the required investment has been made during the project period and that are located at the project site. The exemption does not apply to property existing prior to the execution of the contract to exempt. See the following clarifying examples. ()

a. A company chooses your community to build a new manufacturing facility. The market value of the land purchased is three million dollars (\$3,000,000). The market value of the new facility after construction is ten million dollars (\$10,000,000), not including the land. The board of county commissioners may exempt all or a portion of the market value of the facility (ten million dollars (\$10,000,000)) for up to five (5) years. They cannot exempt any portion of the land value. ()

b. An existing company chooses to expand and build a new processing line. The existing building and land are valued at twelve million dollars (\$12,000,000). The new processing line will increase the value of the building and land to sixteen million dollars (\$16,000,000). The board of county commissioners may exempt all or a portion of the increase value of the facility, which is four million dollars (\$4,000,000) for up to five (5) years. They cannot exempt any portion of the original value of twelve million dollars (\$12,000,000). ()

c. A new company purchases an existing building. The existing building and land is valued at eight million dollars (\$8,000,000). The company will purchase new equipment in the amount of three million dollars (\$3,000,000). The existing property with the new equipment is now valued at eleven million dollars (\$11,000,000). The board of county commissioners may exempt all or a portion of the increased value of the property, which is three million dollars (\$3,000,000). They cannot exempt any portion of the original value of eight million dollars (\$8,000,000). ()

034. Cross Reference. See Rule 802 of these rules for instructions relating to the valuation of new construction. ~~(5-8-09)~~()

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-1602

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105A and 63-802, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 114: Powers and Duties – Property Tax – Value Information – This rule increases the stratum for reporting the properties receiving the homeowner’s exemption. The groups are changed from \$25,000 increments up to \$250,000 to \$25,000 increments up to \$450,000 in order to allow better statistical analysis.

Rule 317: Occupancy Tax on Newly Constructed Improvements on Real Property – This Rule is being amended so that the maximum homeowner’s exemption applied to property subject to the occupancy tax after July 1, 2016 and thereafter will conform with the new law setting the maximum homeowner’s exemption at \$100,000.

Rule 609: Property Exempt From Taxation – Homestead – With passage of House Bill 431 the reference to the House Price Index is deleted from this rule and the examples are changed to reflect the new maximum homeowner’s exemption amount (\$100,000).

Rule 802: Budget Certification Relating to New Construction and Annexation – This rule instructs taxing districts on how to compute new construction amounts within urban renewal revenue allocation areas under newly enacted HB606aa (63-301A). The rule allows new construction within a revenue allocation area when it is determined that an urban renewal plan for new (after July 1, 2016) revenue allocation areas have been modified.

Rule 803: Budget Certification – Dollar Certification Form (L-2 Form) – The administration of the provisions of HB534 and HB 606aa related to property tax budget certification are outlined and the requirements to report the amount and the description of budgeted forgone amount as expressed in HB 474 are explained. This rule also explains how to handle solar farm gross receipt tax receipts when computing maximum property tax budget as set out in newly enacted house bill HB 534 (63-802(1)(j)). The rule also explains the treatment of money received as a result of distributions of urban renewal allocations in excess of the amount necessary to pay indebtedness, as provided in newly enacted HB 606aa (Section 50-2903A(3), Idaho Code). In addition the rule explains how to distribute the money received as a result of distributions of urban renewal allocations in excess of the amount received by the urban renewal agency in the immediate prior year, as provided in Section 50-2913(3)(c), Idaho Code.

Rule 804: Tax Levy-Certification-Urban Renewal Districts – The rule provides for the urban renewal agencies to tell the state tax commission whether or not a plan modification has occurred and describes penalties for non-compliance. This rule provides for a notification process between the tax commission and counties.

Rule 805: Penalty for Failure to Comply with Reporting Requirements – This rule describes acceptable methods of compliance with the requirement to submit urban renewal plan modifications found in newly enacted house bill 606aa (section 7, new I.C. 50-2913) and to explain what action will be taken if the state tax commission does not receive a plan.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state

general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 4, 2016 Idaho Administrative Bulletin, [Volume 16-5, pages 58-59](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest, (208) 334-7742, alan.dornfest@tax.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 5th Day of August, 2016.

Alan Dornfest
Tax Policy Supervisor
State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7742

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1602
(Only Those Sections With Amendments Are Shown.)

114. POWERS AND DUTIES - PROPERTY TAX - VALUE INFORMATION (RULE 114).
Sections 63-105A and 63-509, Idaho Code. To provide needed value information under Subsection 63-105A(2), Idaho Code, each county assessor will, to the extent practicable, report to the State Tax Commission in the same manner and at the same time as the abstract under Section 63-509, Idaho Code, the total market value and exempted value of all property (land and improvements) used for residential purposes and granted the homeowner's exemption under Section 63-602G, Idaho Code, for the current year's assessment roll. Additionally, each county assessor will, to the extent practicable, report to the State Tax Commission the number of properties and the aggregate total market value of the properties granted the homeowner's exemption in each group starting with the group of properties valued at less than or equal to twenty-five thousand dollars (\$25,000) and including each subsequent group with value increases of twenty-five thousand dollars (\$25,000) and ending with the group of properties exceeding the value of more than ~~two~~ four hundred fifty thousand dollars (~~\$24~~50,000). ~~(47-H)~~()

(BREAK IN CONTINUITY OF SECTIONS)

317. OCCUPANCY TAX ON NEWLY CONSTRUCTED IMPROVEMENTS ON REAL PROPERTY (RULE 317).
Section 63-317, Idaho Code

01. Property Subject to Occupancy Tax. Excluding additions to existing improvements, the occupancy tax shall apply to improvements upon real property, whether under the same or different ownership. The occupancy tax shall also apply to new manufactured housing, as defined in Section 63-317, Idaho Code, excluding

additions to existing manufactured housing. (4-6-05)

02. Prorated Market Value. The market value for occupancy tax purposes shall be the full market value on January 1 and shall be prorated at least monthly from the occupancy date to the end of the year. (3-29-10)

03. Notice of Appraisal. When notifying each owner of the appraisal, the county assessor shall include at a minimum the full market value before any exemptions and before any prorating of the value, the length of time subject to the occupancy tax, and the prorated value. (5-3-03)

04. Examples for Calculation of Value Less Homestead Exemption (HO). The following examples show the procedure for the calculation of the taxable value subject to the occupancy tax less the homestead exemption (HO): (3-30-07)

a. Example for prorated market value exceeding maximum amount of the homestead exemption for ~~tax year 2009~~ improvements subject to the occupancy tax beginning July 1, 2016. *Each year the maximum amount of the homestead exemption is subject to modification by the Housing Price Index.*

Full Market Value of Home	- \$300,000
Prorated Market Value for 11 Month Occupancy	- \$300,000 x 11/12 = \$275,000
Taxable Value	- \$275,000 - \$104,471 <u>100,000</u> (HO) = \$ 170,529 <u>175,000</u>

(3-29-10)()

b. Example for prorated market value resulting in less than the maximum amount of the homestead exemption.

Full Market Value of Home	- \$120,000
Prorated Market Value for 3 Month Occupancy	- \$120,000 x 3/12 = \$30,000
Taxable Value	- \$30,000 - \$15,000 (HO) = \$15,000

(3-30-07)

05. Market Value. The market value for occupancy tax purposes shall be entered on an occupancy tax valuation roll. Occupancy tax valuation shall not be included in the assessed value of any taxing district, but occupancy tax must be declared in the certified budget. (3-30-07)

06. Allocation to Urban Renewal Agencies. Occupancy tax revenue shall be distributed to urban renewal agencies in the same manner as property taxes. (4-7-11)

a. The portion of the occupancy tax raised for funds specified in Section 50-2908, Idaho Code, and Rule 804 of these rules must be distributed to the taxing districts levying property taxes for those funds and, therefore, must not be distributed to the urban renewal agency. (5-8-09)

b. Except for occupancy tax raised for funds specified in Section 50-2908, Idaho Code, and Rule 804 of these rules, for parcels within a newly formed revenue allocation area or within an area newly annexed to an existing revenue allocation area, occupancy tax for the tax year during which the formation or annexation took effect must be distributed to the urban renewal agency. (4-7-11)

07. Property Qualifying for the Homestead Exemption on Occupancy Value. When property is subject to occupancy tax, only the improvements shall be eligible for the homestead exemption found in Section 63-602G, Idaho Code. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

609. PROPERTY EXEMPT FROM TAXATION -- HOMESTEAD (RULE 609).

Sections 63-602G, 63-701, 63-703, and 63-3077, Idaho Code

01. Homestead Exemption. The Homestead Exemption granted in 63-602G, Idaho Code shall also be known as the homeowner's exemption. (3-30-07)

~~**02. Idaho Annual House Price Index Change.** The successor to the United States Office of Federal Housing Enterprise Oversight is the Federal Housing Finance Agency. Annually, the State Tax Commission shall calculate the maximum dollar value limit for the homeowner's exemption based on the annual change in the Idaho House Price Index-All Transactions, published by the Federal Housing Finance Agency or its successor. The following procedure shall be used: (4-7-11)~~

~~**a.** Step 1. Calculate the average Idaho House Price Index-All Transactions of the four (4) most recently available quarters as of September 15. (4-7-11)~~

~~**b.** Step 2. Calculate the average Idaho House Price Index-All Transactions of the four (4) quarters immediately preceding the earliest quarter used in Step 1. (4-7-11)~~

~~**c.** Step 3. Divide the Step 1 average by the Step 2 average to determine a factor. (3-30-07)~~

~~**d.** Step 4. Multiply the factor determined in Step 3 by the current maximum dollar value limit on the homeowner's exemption to produce the new dollar value limit. (3-30-07)~~

02. Maximum Amount of Homestead Exemption. The homestead exemption is limited to the lesser of fifty percent (50%) of assessed value or one hundred thousand dollars (\$100,000). ()

03. Partial Ownership. Any partial ownership shall be considered ownership for determining qualification for the homeowner's exemption; however, the amount of the exemption shall be decided on the reduced proportion of the value commensurate with the proportion of partial ownership. The proportional reduction shall not apply to the ownership interests of a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation when that person has no less than five percent (5%) ownership interest in the entity unless any ownership interest is shared by any entity other than the limited partnership, limited liability company or corporation. For tenants in common with two (2) improvements located on one (1) parcel of land, determine the applicable value for the homeowner's exemption using the procedure shown in Example 1 of Paragraph 609.03.a., of this rule unless the owner-occupant provides documented evidence of a different ownership interest in the improvement. See Examples 2, 3, and 4 in Paragraphs 609.03.b., 609.03.c., and 609.03.d. of this rule for additional partial ownership guidance. To calculate property tax reduction benefits when partial ownership exists, see Paragraph 700.05.b. of these rules. (4-2-08)()

a. Example 1. John Smith and Bob Anderson own a property as tenants in common with two (2) residential improvements located on the property. Each residential improvement is owner occupied by one (1) of the tenants in common. The homeowner's exemption is calculated as follows:

Description	Value	Notes
Land	\$42,000	
Residential Improvement	\$82,000	Occupied by Mr. Smith
Prorated Ownership Interest (land and improvement)	\$62,000	Mr. Smith's interest
Homeowner's Exemption	\$31,000	For Mr. Smith as owner occupant
Residential Improvement	\$67,000	Occupied by Mr. Anderson

Description	Value	Notes
Prorated Ownership Interest (land and improvement)	\$54,500	Mr. Anderson's interest
Homeowner's Exemption	\$27,250	For Mr. Anderson as owner occupant

(3-30-07)

b. Example 2. John Smith and Bob Anderson own a parcel of land as tenants in common with two (2) residential improvements located on the parcel. Mr. Smith has documented evidence of one hundred percent (100%) interest in one (1) residential improvement and Mr. Anderson has documented evidence of one hundred percent (100%) interest in the remaining residential improvement. Each residential improvement is owner occupied. The homeowner's exemption is calculated as follows:

Item Description	Value	Notes
Land	\$42,000	<u>Split 50% to each owner</u>
Residential Improvement	\$82,000	Owned and occupied by Mr. Smith
Homeowner's Exemption	\$51,500	For Mr. Smith
Residential Improvement	\$67,000	Owned and occupied by Mr. Anderson
Homeowner's Exemption	\$44,000	For Mr. Anderson

(3-30-07)()

c. Example 3. Tom Johnson and Marie Johnson, husband and wife, and June Smith jointly own a property and occupy one (1) residential improvement located on the property. The following example shows how to calculate each homeowner's exemption.

Description	Value	Notes
Land	\$95,000	
Residential Improvement	\$215,000	
Land and Improvement	\$310,000	
Prorated ownership interest (land and improvement) (\$310,000 X 66.67%)	\$206,677	Mr. & Mrs. Johnson's interest
Homeowner's Exemption Maximum for 2010 (\$ 101,153 100,000 X 66.67%)	\$67,439 66,670	Mr. & Mrs. Johnson's Homeowner's Exemption
Prorated ownership interest (land and improvement) (\$310,000 X 33.33%)	\$103,323	Ms. Smith's interest
Homeowner's Exemption Maximum for 2010 7 (\$ 101,153 100,000 X 33.33%)	\$33,714 33,330	Ms. Smith's Homeowner's Exemption

(4-7-11)()

d. Example 4. John and Susan Doe, husband and wife, and Mike Person jointly own a property, and Mr. and Mrs. Doe occupy the one (1) residential improvement located on the property. The following example shows how to calculate each homeowner's exemption.

Description	Value	Notes
Land	\$65,000	
Residential Improvement	\$195,000	
Land and Improvement	\$260,000	
Prorated ownership interest (land and improvement) (\$260,000 X 66.67%)	\$173,342	Mr. & Mrs. Doe's interest
Homeowner's Exemption (Maximum for 2010 7 is 50% up to \$ 101,153 100,000)	\$86,671	Mr. & Mrs. Doe's Homeowner's Exemption
Prorated ownership interest (land and improvement) (\$260,000 X 33.33%)	\$86,658	Mr. Person's interest
Homeowner's Exemption	\$0	Mr. Person does not qualify for a home-owner's exemption on this property.

(4-7-11)()

04. Part Year Ownership. For qualifying taxpayers who claimed the homeowner's exemption on an eligible property, the homestead that qualified on January 1 of the current tax year shall continue to receive the exemption, provided however, the assessor may remove that property's exemption if, by April 15 of the tax year, the taxpayer owns a different homestead and requests that the exemption be transferred to the second homestead.

(4-11-15)

05. Determination of Residency. The State Tax Commission may release pertinent information from any Idaho income tax return to the county assessor and the county Board of Equalization for the sole purpose of providing one (1) indicator of eligibility for the homeowner's exemption. According to Section 63-3077(4), Idaho Code, this information is confidential and is not subject to public disclosure.

(4-11-06)

06. Notification of Erroneous Claims. When it is determined that an exemption granted under this Section to a taxpayer who has also received property tax relief under Chapter 7, Idaho Code, should not have been granted, the county assessor shall notify the State Tax Commission of the determination.

(3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

802. BUDGET CERTIFICATION RELATING TO NEW CONSTRUCTION AND ANNEXATION (RULE 802).

Sections 63-802, 63-301A, 63-602W, and 63-602NN, Idaho Code

01. Definitions.

(4-5-00)

a. "Change of Land Use Classification." "Change of land use classification" shall mean any change in land use resulting in a secondary category change and in a change in taxable land value to be reflected on the current property roll.

(4-7-11)

b. "Incremental Value as of December 31, 2006." "Incremental value as of December 31, 2006" means the total of the increment values on the property roll, subsequent property roll, missed property roll, and operating property roll for the 2006 tax year.

(4-7-11)

c. "Nonresidential Structure." "Nonresidential structure" shall mean any structure listed by the assessor in any secondary category not described as residential, manufactured homes, or improvements to manufactured homes in Rule 511 of these rules.

(4-2-08)

02. New Construction Roll Listing. “Listing” shall mean a summary report of the net taxable value of property listed on the new construction roll. This listing shall include the taxable value of qualifying new construction throughout each taxing district or unit, but shall not include otherwise qualifying new construction, the value of which will be included in the increment value of any revenue allocation area (RAA) within any urban renewal district encompassed by the taxing district or unit. In addition, new construction related to change of land use classification, but required by section 50-2903(4) to be added to the base assessment roll, cannot be added to any new construction roll. This report is to summarize the value reported on the new construction roll by taxing district or unit. Taxing districts and units shall be listed in the same order that is used for the certification of value required pursuant to Section 63-510(1), Idaho Code. (3-29-12)

a. Qualifying new construction which is valued by the State Tax Commission shall be reported to the county assessor for each applicable taxing district by October 1 and shall be listed by the assessor on the immediate next new construction roll. (3-25-16)

b. Previously allowable new construction that has never been included. When a taxing district proves new construction described by Section 63-301A(3), Idaho Code, occurred during any one of the immediately preceding five (5) years and has never been included on a new construction roll, the county assessor must list that property on the immediate next new construction roll at the value proven by the taxing district. Any such additional new construction must also be separately listed for each taxing district or unit. The taxing district has the burden of proving the new construction was omitted from a new construction roll and the value that would have been listed for that property had it been listed on the appropriate new construction roll. No taxing district shall ever be granted any increase in budget authority greater than the amount that would have resulted had the property been listed on the appropriate new construction roll. Regardless of the year that the new construction should have been listed on the appropriate new construction roll, additional budget authority resulting from new construction previously omitted from a new construction roll and listed on the current year’s new construction roll shall be permitted only if the taxing district is in compliance with the budget hearing notification requirements of Section 63-802A, Idaho Code, for the current year. (3-29-12)

c. Reporting the amount of taxable market value to be deducted. For each taxing district or unit, the new construction roll listing shall separately identify the total amount of taxable market value to be deducted as required in Section 63-301A(1)(f), Idaho Code. In addition to other requirements, the amount of value deducted shall never exceed the amount originally added to a new construction roll. (3-29-12)

d. Determining the amount of taxable market value to be deducted. The amount of taxable market value to be deducted under Section 63-301A(1)(f)(i), Idaho Code, shall be determined by the highest authority to which the assessment is ultimately appealed. Accordingly, adjustments should not be made until there has been a final decision on any appeal. In addition, the deduction for lower values resulting from appeals shall be made only for property that was placed on a new construction roll within the immediately preceding five (5) years. (3-29-12)

03. Special Provisions for Value Increases and Decreases. Special provisions for value increases and decreases related to change of land use classification as defined in Paragraph 802.01.a. of this rule or increases in land value resulting from loss of the exemption provided in Section 63-602W(4), Idaho Code. (4-4-13)

a. Value increases. Certain related land value increases are to be included on the new construction roll. (4-7-11)

i. Except as provided in Subparagraph 802.03.a.iii., increases in land value shall be reported on the new construction roll in the year in which the new category appears on the current property roll. (4-4-13)

ii. Except as provided in Subparagraph 802.03.a.iii., the increase in taxable land value to be reported shall be computed by subtracting the taxable land value, had the land remained in its previous use category, from the taxable land value in the current use category. (4-4-13)

iii. Subject to the limitations found in Paragraph 802.06.a. of this rule, increases in land value resulting from loss of the exemption provided in Section 63-602W(4), Idaho Code, shall be reported on the new construction roll in the year the exemption is lost, provided this occurs no later than June 30 of that year. If the exemption is lost

after June 30 of a given year, the resulting increase in land value shall be reported on the new construction roll in the immediate following year. (4-4-13)

b. Value decreases. Certain related land value decreases are to be included on the new construction roll and subtracted from total new construction value for any taxing district. The amount of decrease in any one year shall never exceed the amount of value originally added to the new construction roll for the same property. (4-4-13)

i. Value decreases are to be reported only for land for which taxable market value was reduced as a result of change of land use classification or granting of the exemption for site improvements provided in Section 63-602W(4), Idaho Code, during any one (1) of the immediately preceding five (5) years and for which an increase in value due to addition of site improvements or change of land use classification during the same five-year period had been added to a new construction roll. For the site improvement exemption provided in Section 63-602W(4), Idaho Code, the five-year period shall commence with the year following the year the exemption is first granted. For example, if a parcel first received the exemption in 2012, any site improvement related addition to a new construction roll for 2008 or more recently must be subtracted from the 2013 new construction roll, unless the exemption is lost by June 30, 2013, in which case there is no subtraction and no addition to the new construction roll for the loss of this exemption. (4-4-13)

ii. If the current land category is the same as the category prior to the change that resulted in an addition to the new construction roll, the amount to be subtracted shall equal the amount originally added. For example, a dry grazing land parcel that would have had a value of ten thousand dollars (\$10,000) became commercial land and was assessed at fifty thousand dollars (\$50,000). The forty thousand dollar (\$40,000) difference was reported on the new construction roll in year one (1). In year two (2), the parcel is reclassified as dry grazing land and is to be assessed at fifteen thousand dollars (\$15,000). The forty thousand dollar (\$40,000) difference that was added to the year one (1) new construction roll must be deducted from the value shown on the new construction roll in year two (2). (4-7-11)

iii. If the current land category is different than the category prior to the change that resulted in an addition to the new construction roll, the amount to be subtracted shall be the lesser of the amount originally added or the amount that would have been added had the first change in land use been from the current land category. For example, a dry grazing land parcel that would have had a value of ten thousand dollars (\$10,000) became commercial land and was assessed at fifty thousand dollars (\$50,000). The forty thousand dollar (\$40,000) difference was reported on the new construction roll in year one (1). In year two (2), the parcel is reclassified as irrigated agricultural land and would have had a value in year one (1) of twenty thousand dollars (\$20,000). The amount to be subtracted from the value shown on the new construction roll in year two (2) is thirty thousand dollars (\$30,000). (4-7-11)

iv. Provided the criteria in Subparagraph 802.03.b.i. are met, value decreases resulting from previously included land value becoming exempt are to be reported and subtracted. (4-4-13)

v. Except as provided in Subparagraph 802.03.b.vi., only land value decreases that meet the criteria listed in Subparagraphs 802.03.b.i. or 802.03.b.iv. of this rule and include and result from a change in land secondary category can be considered. (4-4-13)

vi. Provided the criteria in Subparagraph 802.03.b.i. are met, land value decreases resulting from the exemption provided in Section 63-602W(4), Idaho Code, are to be subtracted from the new construction roll in the year immediately following the most recent year in which the exemption has been granted. To comply with the budget adjustments required by Section 63-802, Idaho Code, which limits taxing district budgets based on the highest amount of property tax revenue requested during the previous three (3) years, such subtraction shall be required for up to three (3) years, provided the property continues to receive the exemption. For example, a property for which five hundred thousand dollars (\$500,000) was added to the 2011 new construction roll for site improvements that were added and taxable at that time receives a five hundred thousand dollar (\$500,000) exemption pursuant to Section 63-602W(4), Idaho Code, in 2012. The property continues to receive the exemption in the same amount in 2013, but the exempt amount increases to five hundred twenty thousand dollars (\$520,000) in 2014. The property loses the exemption before June 30, 2015. However, the 2015 value of the site improvements has been determined to be only four hundred thousand dollars (\$400,000) because of market value changes. Therefore, only four hundred thousand dollars (\$400,000) in value is added as a result of the loss of the exemption. Table A shows the effect on each year's new construction roll, while Table B shows the effect on a hypothetical taxing district's maximum

allowable property tax budget.

(4-4-13)

vii. Table A - Effect on New Construction Roll:

Table A - Effect on New Construction Roll		
Year	Occurrence	Effect on New Construction Roll (for that year)
2011	Site improvements added and taxable	+ \$500,000
2012	Site improvements exempt	NA (no prior year's exemption)
2013	Site improvements exempt	- \$500,000
2014	Site improvements exempt	- \$500,000
2015	Loses site improvement exemption before June 30	+ \$400,000

(4-4-13)

viii. In Table B, assume that the taxing district has a tax levy rate of zero point zero zero two five (0.0025) in 2010, a total taxable value of one hundred million dollars (\$100,000,000) in 2010 and a property tax budget in 2010 that is two hundred fifty thousand dollars (\$250,000) and was the highest of the preceding three (3) years. The total amount of new construction is the amount due to the site improvements and no other value change occurs in the district during the period shown. There are no property tax replacement monies for this district. Beginning in 2011 the taxing district levies the maximum it is allowed each year. The factor of one point zero three (1.03) shown in Table B is used to calculate the allowable three percent (3%) increase. (4-4-13)

ix. Table B - Effect on Hypothetical Taxing District's Maximum Allowable Property Tax Budget:

Table B - Effect on Hypothetical Taxing District's Maximum Allowable Property Tax Budget				
Year	Occurrence	Effect on New Construction Roll (for that year)	Maximum Allowable Property Tax Budget	Calculations
2011	Site improvements added and taxable	+ \$500,000	\$258,750	$(\$250,000 \times 1.03) + (\$500,000 \times 0.0025)$ (tax levy rate = $\$258,750 / \$100,000,000 = 0.002574627$)
2012	Site improvements exempt	NA (no prior year's exemption; no new construction value)	\$266,512	$\$258,750 \times 1.03$ (tax levy rate = $\$266,512 / \$100,000,000 = 0.002665120$)
2013	Site improvements exempt	- \$500,000	\$273,174	$(\$266,512 \times 1.03) - (\$500,000 \times 0.002665120)$ (tax levy rate = $\$273,174 / \$100,000,000 = 0.002731744$)
2014	Site improvements exempt	- \$500,000	\$280,003	$(\$273,174 \times 1.03) - (\$500,000 \times 0.002731744)$ (tax levy rate = $\$280,003 / \$100,000,000 = 0.002800033$)

Table B - Effect on Hypothetical Taxing District's Maximum Allowable Property Tax Budget				
Year	Occurrence	Effect on New Construction Roll (for that year)	Maximum Allowable Property Tax Budget	Calculations
2015	Loses site improvement exemption before June 30	+ \$400,000	\$289,523	$(\$280,003 \times 1.03) + (\$400,000 \times 0.002731744)$ (tax levy rate = $\$289,523 / \$100,400,000 = 0.002883696$)

(4-4-13)

04. Manufactured Housing. “Installation” of new or used manufactured housing shall mean capturing the net taxable market value of the improvement(s) that did not previously exist within the county. (7-1-97)

05. Partial New Construction Values. Except as provided in Subsection 802.06 of this rule, the net taxable market value attributable directly to new construction shall be reported on the new construction roll in the tax year it is placed on the current assessment roll. Except as provided in Subsection 802.06 of this rule, any increase in a nonresidential parcel’s taxable value, due to new construction, shall be computed by subtracting the previous year’s or years’ partial taxable value(s) from the current taxable value. If any of this difference is attributable to inflation, such value, except as provided in Subsection 802.06 of this rule, shall not be included on the new construction roll.

Example: Assume a partially completed, nonresidential improvement was assessed at ten thousand dollars (\$10,000) as of January 1, 2009. The improvement was occupied February 2, 2009. Assume the ten thousand dollar (\$10,000) value was on the 2009 new construction roll. Assume that in 2010 the improvement is assessed at ninety thousand dollars (\$90,000). Assume there has been no inflation. The value that can be reported on the 2010 new construction roll is calculated as follows:

2010 Value	\$90,000
2009 Value Already Reported on New Construction Roll	<\$10,000>
2010 New Construction Roll Value (this improvement)	\$80,000

(4-7-11)

06. Change in Status. (4-2-08)

a. A previously exempt improvement which becomes taxable shall not be included on the new construction roll, unless the loss of the exemption occurs during the year in which the improvement was constructed or unless the improvement has lost the exemption provided in Section 63-602W(3) or (4), Section 63-602E(3), or Section 63-602NN, Idaho Code. For any such property, the amount that may be included on the new construction roll shall be the value of the portion of the property subject to the exemption at the time the exemption was first granted. Examples of special cases for the exemption provided in Section 63-602W(4), Idaho Code, follow: (4-4-13)

i. If the exemption is lost by June 30 of the year in which the exempt amount was to be subtracted from the new construction roll, then there shall be no subtraction, nor shall the formerly exempt amount be added, to the new construction roll, unless it had been previously subtracted from a new construction roll. For example, the property first became exempt in 2012, but lost the exemption by June 30, 2013. The 2013 new construction roll was not adjusted downward, so any previous inclusion of the exempt value would not be added in the future. Had the property lost the exemption later in 2013, there would have been a subtraction from the 2013 new construction roll and a subsequent addition to the 2014 new construction roll. (4-4-13)

ii. If the exemption was granted to property for which no value had been added to any new construction roll, the value of the property (site improvements) at the time the exemption was first granted may be

added to the new construction roll following loss of the exemption. (4-4-13)

b. Upon receipt by the State Tax Commission of a resolution recommending adoption of an ordinance for termination of an RAA under Section 50-2903(5), Idaho Code, any not previously included positive difference of the most current increment value minus the “incremental value as of December 31, 2006,” or the entire current increment value, if there was no such value as of December 31, 2006, shall be added to the appropriate year’s new construction roll. Upon the effective date of any de-annexation of a portion of an RAA, the immediate prior year’s increment value associated with the parcels in the de-annexed area is to be included in the appropriate year’s new construction roll as described in Paragraph 802.06.d. of this rule, provided such value has not been previously included on any new construction roll. When this information is received after the fourth Monday in July, this positive net increment value shall be added to the following year’s new construction roll. (4-7-11)()

c. Upon receipt by the State Tax Commission of an attestation indicating that an urban renewal plan has been modified in such a way as to result in resetting the base value in an RAA, as provided in Section 50-2903A, Idaho Code, increases in base value due to the addition of previously determined increment value may be added to the new construction roll as described in Section 63-301A(3)(j), Idaho Code, provided such value has not previously been included on any new construction roll. In such a case, at termination of the RAA, only new additional increment value following the reset of the base value shall be included on the new construction roll. ()

d. When a portion of an RAA is de-annexed, the following steps must be used to determine the amount to be added to the current year’s new construction roll and the amount to be subtracted from the “incremental value as of December 31, 2006.” (4-7-11)

i. Step 1. For the parcels in the de-annexed area, determine the December 31, 2006, increment value. (4-7-11)

ii. Step 2. Subtract the increment value determined in Step 1 from the most current immediate prior year’s increment value for the parcels in the de-annexed area. (4-7-11)()

iii. Step 3. Add any positive difference calculated in Step 2 to the current year’s new construction roll value. (4-7-11)

iv. Step 4. Adjust the “incremental value as of December 31, 2006” for the RAA by subtracting the increment value determined in Step 1. (4-7-11)

v. The following table shows the amount to be added to the current year’s new construction roll and the amount to be subtracted from the “incremental value as of December 31, 2006” applicable to the adjusted remaining RAA. The table assumes an area is de-annexed from an original RAA effective December 31, 2009.

Steps (as designated in Paragraph 802.06.c.)	Area	Value
	December 31, 2006, increment value of the original RAA	\$10,000,000
Step 1	December 31, 2006, increment value of the de-annexed area	\$1,000,000
	December 31, 2009 16 ¹⁵ , increment value of the de-annexed area	\$3,000,000
Steps 2 and 3	Amount related to the de-annexed area to be added to the 2010 new construction roll	\$2,000,000
Step 4	Adjustment amount to be deducted from the original RAA’s “incremental value as of December 31, 2006”	<\$1,000,000>
	Adjusted “incremental value as of December 31, 2006” for the remaining RAA (base for future new construction roll additions upon dissolution of all or part of remaining RAA)	\$9,000,000

(4-7-11)()

vi. If the de-annexation in the example in sub-paragraph v. had taken effect prior to the fourth Monday of July, 2016, the 2015 increment value for the affected parcels would have been added to the 2016 new construction roll after subtracting the 2006 increment value. ()

vii. The value of operating property increment value to be included on the new construction roll when a de-annexation occurs is computed as shown in the following example:

<u>Sum the previous year's increment values of the locally assessed parcels in the area to be de-annexed</u>	<u>\$15,000,000</u>
<u>Divide this sum by the previous year's increment value of all locally assessed parcels in the RAA</u>	<u>\$15,000,000 ÷ \$130,000,000 = .1154</u>
<u>Multiply by 100 to determine the percentage applicable to the locally assessed parcels located within the area to be de-annexed</u>	<u>.1154 x 100 = 11.54%</u>
<u>Determine the difference between the operating property increment value in the whole RAA for the year preceding the de-annexation from the 2006 increment value of all operating in the whole RAA</u>	<u>\$2,000,000 - \$500,000 = \$1,500,000</u>
<u>Multiply the locally assessed percentage by the increase in the operating property increment value</u>	<u>11.54% x \$1,500,000 = \$173,100</u>
<u>The value of operating property increment to be included on the new construction roll when a de-annexation occurs</u>	<u>\$173,100</u>

()

07. Limitation on Annexation and New Construction Roll Value. For any taxing district annexing property in a given year, the new construction roll for the following year shall not include value that has been included in the annexation value. When an annexation includes any part of a revenue allocation area, only taxable value that is part of the current base value of the taxing district is to be included in the annexation value reported for that taxing district for the year following the year of the annexation. (3-29-10)

08. Notification of New Construction Roll and Annexation Values. On or before the fourth Monday in July, each county auditor must report the net taxable values on the new construction roll and within annexed areas for each appropriate taxing district or unit to that taxing district or unit. (3-20-04)

803. BUDGET CERTIFICATION -- DOLLAR CERTIFICATION FORM (L-2 FORM) (RULE 803). Sections 63-602G(5), 63-802, 63-803, 63-3029B(4), 63-3502B, 50-2903A, 50-2913, 63-3638(11), and (13), Idaho Code

01. Definitions. (4-5-00)

a. "Dollar Certification Form" (L-2 Form). The Dollar Certification Form (L-2 Form) is the form used to submit to the State Tax Commission the budget request from each board of county commissioners for each taxing district. This form shall be presumed a true and correct representation of the budget previously prepared and approved by a taxing district. The budget will be presumed adopted in accordance with pertinent statutory provisions unless clear and convincing documentary evidence establishes that a budget results in an unauthorized levy and action as provided in Section 63-809, Idaho Code. (4-6-05)

b. "Prior Year's Market Value for Assessment Purposes." Prior year's market value for assessment purposes shall mean the value used to calculate levies during the immediate prior year. This value shall be used for calculating the permanent budget increase permitted for cities, pursuant to Section 63-802(1)(f), Idaho Code. (4-2-08)

c. “Annual Budget.” For the purpose of calculating dollar amount increases permitted pursuant to Section 63-802(1), Idaho Code, the annual budget shall include any amount approved as a result of an election held pursuant to Sections 63-802(1)(f) or 63-802(1)(g), Idaho Code, provided that said amount is certified on the L-2 Form as part of the budget request. If the amount certified does not include the entire amount approved as a result of the election held pursuant to Sections 63-802(1)(f) or 63-802(1)(g), Idaho Code, then the amount not used shall be added to the foregone increase amount determined for the taxing district. See the following example.

CERTIFIED PROPERTY TAX BUDGET LIBRARY DISTRICT*				
	FY 1999	FY 2000	FY 2001	FY 2002
Annual Budget	\$10,000	\$10,000	\$10,700	\$11,621
3% Increase	\$0	\$300	\$321	\$349
Subtotal	\$10,000	\$10,300	\$11,021	\$11,970
1999 Election Amount	\$0	\$400 of \$1,000	\$600 of \$1,000	\$0
Certified Budget	\$10,000	\$10,700	\$11,621	\$11,970

*The Library District with zero dollars (\$0) in value for new construction and/or annexation approves an additional budget amount of one thousand dollars (\$1,000) in 1999, but only certifies four hundred dollars (\$400) for the year 2000. Note the example does not account for any foregone amount resulting from the district's decision to not increase its budget by three percent (3%) in 1997, 1998 or 1999. (4-6-05)

d. “Property Tax Funded Budget.” Property tax funded budget means that portion of any taxing district’s budget certified to the board of county commissioners, approved by the State Tax Commission, and subject to the limitations of Section 63-802, Idaho Code. (3-20-04)

e. “Recovered/Recaptured Property Substitute Funds Tax List.” Recovered/recaptured property tax substitute funds list means the report sent by the county auditor to the appropriate taxing district(s)/unit(s) by the first Monday in August and to the State Tax Commission with the L-2 Forms, listing the amount of revenue distributed to each appropriate taxing district/unit as recovery of property tax or other payments during the twelve (12) month period ending June 30 each year under the following sections: (5-8-09)

- i. Section 63-602G(5), Idaho Code; and (5-8-09)
- ii. Section 63-3029B(4), Idaho Code; and (5-8-09)
- ~~iii. Section 31-808(11), Idaho Code; and (4-11-15)~~
- ~~iv. Section 63-602KK(7), Idaho Code, for personal property exempted after 2013 for which no replacement money was paid; and (3-25-16)()~~
- ~~iv. Section 63-3502B(2), Idaho Code, for distributions of gross earnings tax on solar farms; and ()~~
- ~~v. Section 50-2903A(3), Idaho Code, for distributions of urban renewal allocations in excess of the amount necessary to pay indebtedness, when required; and ()~~
- ~~vi. Section 50-2913(3)(c), Idaho Code, for distributions of urban renewal allocations in excess of the amount received during the immediate prior tax year, when required. ()~~

f. “Taxing District/Unit.” Taxing district/unit means any governmental entity with authority to levy property taxes as defined in Section 63-201, Idaho Code, and those noncountywide governmental entities without authority to levy property taxes but on whose behalf such taxes are levied or allocated by an authorized entity such as the county or city for such entities as county road and bridge funds or urban renewal agencies, respectively. (4-6-05)

g. “New Taxing District.” For property tax budget and levy purposes, new taxing district means any taxing district for which no property tax revenue has previously been levied. See the Idaho Supreme Court case of Idaho County Property Owners Association, Inc. v. Syringa General Hospital District, 119 Idaho 309, 805 P.2d 1233 (1991). (4-2-08)

02. Budget Certification. The required budget certification shall be made to each board of county commissioners representing each county in which the district is located by submitting the completed and signed L-2 Form prescribed by the State Tax Commission. Unless otherwise provided for in Idaho Code, budget requests for the property tax funded portions of the budget shall not exceed the amount published in the notice of budget hearing if a budget hearing notice is required in Idaho Code for the district. The levy approved by the State Tax Commission shall not exceed the levy computed using the amount shown in the notice of budget hearing. (3-20-14)

03. Budget Certification Requested Documents. Using the completed L-2 Form, each board of county commissioners shall submit to the State Tax Commission a budget request for each taxing district in the county that certifies a budget request to finance the property tax funded portion of its annual budget. The board of county commissioners shall only submit documentation specifically requested by the State Tax Commission. For any taxing district submitting a budget including previously forgone increases, required documentation includes a copy of the resolution certifying the amount of the forgone increase being included and the specific purpose for which this increase is being budgeted. Each such taxing district must submit the resolution to the board of county commissioners representing each county in which the district is located along with the L-2 Form. The board of county commissioners must attach a copy of the resolution to be submitted to the State Tax Commission along with the L-2 Form. Such submittal will constitute submittal to the State Tax Commission. (4-2-08)()

04. L-2 Form Contents. Each taxing district or unit completing an L-2 Form shall include the following information on or with this form. (3-20-04)

a. “Department or Fund.” Identify the department or fund for which the taxing district is requesting a budget for the current tax year. (4-5-00)

b. “Total Approved Budget.” List the dollar amount of the total budget for each department or fund identified. The amounts must include all money that a taxing district has a potential to spend at the time the budget is set, regardless of whether funds are to be raised from property tax. (4-5-00)

c. “Cash Forward Balance.” List any money retained, but intended to be spent to fund the approved budget being certified on the L-2 form. (4-11-15)

d. “Other Revenue not Shown in Column 5.” List the revenue included in the total approved budget to be derived from sources other than property tax or money brought forward from a prior year. For example, sales tax revenue is included. (3-15-02)

e. “Property Tax Replacement.” Report the following: (5-8-09)

i. The amount of money received annually under Section 63-3638(11), Idaho Code, as replacement revenue for the agricultural equipment exemption under Section 63-602EE, Idaho Code; (4-11-15)

ii. The amount of money received as recovery of property tax exemption under Section 63-602G(5), Idaho Code, and listed on the “Recovered/recaptured property tax substitute funds list”; (5-8-09)

iii. The amount of money received as recapture of the property tax benefit under Section 63-3029B(4), Idaho Code, and listed on the “Recovered/recaptured property tax substitute funds list”; (4-11-15)

~~iv.~~ *The amount of money transferred from the interest-bearing trust to the county indigent fund under Section 31-808(11), Idaho Code;* (5-8-09)

iv. The appropriate amount of money listed on the statement and distributed to the county and each appropriate city under Section 63-2603, Idaho Code, as county property tax relief and detention facility debt retirement; (3-25-16)

vi. The amount of money received annually under Section 63-3638(13), for the personal property exemption under 63-602KK(2), Idaho Code; ~~and~~ (3-25-16)()

vii. The amount of money received annually under Section 63-602KK(7), Idaho Code, for personal property exempted after 2013, for which no replacement money was paid, and listed on the "Recovered/recaptured property tax substitute funds list"; (3-25-16)()

viii. The amount of money received in the 12 month period ending June 30 of the current tax year as a result of distributions of the gross earning tax on solar farms, as provided in Section 63-3502B(2), Idaho Code, and listed on the "Recovered/recaptured property tax substitute funds list"; ()

ix. The amount of money received in the 12 month period ending June 30 of the current tax year as a result of distributions of urban renewal allocations in excess of the amount necessary to pay indebtedness, as provided in Section 50-2903A(3), Idaho Code, and listed on the "Recovered/recaptured property tax substitute funds list"; and ()

x. The amount of money received in the 12 month period ending June 30 of the current tax year as a result of distributions of urban renewal allocations in excess of the amount received by the urban renewal agency in the immediate prior year, as provided in Section 50-2913(3)(c), Idaho Code and listed on the "Recovered/recaptured property tax substitute funds list." ()

f. "Balance to be Levied." Report the amount of money included in the total approved budget to be derived from property tax. (3-15-02)

g. Other Information. Provide the following additional information. (4-5-00)

i. The name of the taxing district or unit; (3-20-04)

ii. The date of voter approval (if required by statute) and effective period for any new or increased fund which is exempt from the budget limitations in Section 63-802, Idaho Code; (4-5-00)

iii. The signature, date signed, printed name, address, and phone number of an authorized representative of the taxing district; and (5-3-03)

iv. For a hospital district which has held a public hearing, a signature certifying such action. (4-5-00)

v. For any taxing district including previously forgone increases in their budget, an attestation to having held the required public hearing on the resolution to include the forgone amount. ()

h. Attached Information. Other information submitted to the county auditor with the L-2 Form. (4-6-05)

i. For all taxing districts, L-2 worksheet. (3-20-04)

ii. For newly formed recreation or auditorium districts, a copy of the petition forming the district showing any levy restrictions imposed by that petition. (3-20-04)

iii. For any new ballot measures (bonds, overrides, permanent overrides, supplemental maintenance and operations funds, and plant facility funds), notice of election and election results. (3-20-04)

iv. Voter approved fund tracker. (3-20-04)

v. For fire districts, a copy of any new agreements with utility companies providing for payment of property taxes by that utility company to that fire district. (3-20-04)

vi. For any city with city funded library operations and services at the time of consolidation with any

library district, each such city must submit a certification to the board of county commissioners and the board of the library district reporting the dedicated portion of that city's property tax funded library fund budget and separately reporting any portion of its property tax funded general fund budget used to fund library operations or services at the time of the election for consolidation with the library district. (3-20-04)

vii. For any library district consolidating with any city that had any portion of its property tax funded budget(s) dedicated to library operations or services at the time of the election for consolidation, each such library district must submit to the board of county commissioners a copy of the certification from that city reporting the information provided for in Subparagraph 803.04.h.vi. of this rule. (4-6-05)

viii. For any taxing district including previously forgone increases in their budget, a copy of the resolution describing the amount of the forgone increase being included and specific purpose for which it is being included. ()

05. Special Provisions for Fire Districts Levying Against Operating Property. To prevent double counting of public utility property values, for any year following the first year in which any fire district increases its budget using the provision of Section 63-802(2), Idaho Code, such fire district shall not be permitted further increases under this provision unless the following conditions are met: (3-30-01)

a. The fire district and public utility have entered into a new agreement of consent to provide fire protection to the public utility; and (3-30-01)

b. Said new agreement succeeds the original agreement; and (3-30-01)

c. In the first year in which levies are certified following the new agreement, the difference between the current year's taxable value of the consenting public utility and public utility value used in previous budget calculations made pursuant to this section is used in place of the current year's taxable value of the consenting public utility. (3-30-01)

06. Special Provisions for Property Tax Replacement. Property tax replacement monies must be reported on the L-2 Form and separately identified on accompanying worksheets. Except as provided in Paragraph 803.06.f. of this rule, for all taxing districts, these monies must be subtracted from the "balance to be levied". The reduced balance shall be used to compute levies, but the maximum amount permitted pursuant to Section 63-802, Idaho Code, shall be based on the sum of these property tax replacement monies, excluding monies received pursuant to Section ~~31-808(11)~~ 63-3502B(2), Idaho Code, and the amount actually levied. (4-11-15)()

a. The State Tax Commission shall, by the fourth Monday of July, notify each county clerk if the amount of property tax replacement money, pursuant to Sections 63-3638(11) and (13), Idaho Code, to be paid to a taxing district changes from the amount paid in the preceding year. By the first Monday of May, the State Tax Commission shall further notify each school district and each county clerk of any changes in the amount of property tax replacement money to be received by that school district pursuant to Sections 63-3638(11) and (13), Idaho Code. (4-11-15)

b. By no later than the first Monday of August of each year, each county clerk shall notify each appropriate taxing district or unit of the total amount of property tax replacement monies ~~that will be received~~, and ~~shall further identify~~ the type of replacement money as described in Paragraph 803.04.e. of this rule. For charter school districts subject to the provisions of Paragraph 803.06.f. of this rule, the amount to be subtracted shall be reported. (4-11-15)()

c. Except as provided in Paragraph 803.06.d. of this rule, the subtraction required in Subsection 803.06 of this rule may be from any fund(s) subject to the limitations of Section 63-802, Idaho Code. For school districts this subtraction must be first from funds subject to the limitations of Section 63-802, Idaho Code, then from other property tax funded budgets. (5-8-09)

d. For counties taxing districts receiving monies distributions of the gross earning tax on solar farms described in Section ~~31-808(11)~~ 63-3502B(2), Idaho Code, the amount of ~~money transferred from the interest bearing trust to the county indigent fund~~ any such distribution received during the 12 (twelve) months ending June 30

of the current tax year shall be subtracted from the maximum amount of property tax revenue permitted pursuant to Section 63-802, Idaho Code. In addition to the amounts reported as described in Paragraph 803.06.b. of this rule, the county clerk shall, by the third Monday in August, notify each taxing unit of the total amount of the gross earnings tax on solar farms billed for the current tax year. (5-8-09)()

e. Levy limits shall be tested against the amount actually levied. (3-15-02)

f. For charter school districts with a levy in 2013 for maintenance and operations, as provided in Section 33-802(6), Idaho Code, a portion of the property tax replacement money received for property subject to the exemption in Section 63-602KK, Idaho Code, is not required to be subtracted in determining the "balance to be levied." Said portion shall be the amount calculated by applying the 2013 levy rate for the maintenance and operations levy amount, as authorized in the district's charter, to the 2013 exempt value of personal property used to compute replacement money provided to the school district. (4-11-15)

g. For recovered personal property exemptions, as provided in Section 63-602KK(7), Idaho Code, for personal property exempted in 2013 for which replacement money was paid, recovered amounts shall be distributed to the State Tax Commission. Once received, the amount of future payments to the affected taxing districts shall be reduced by the amount received. (3-25-16)

07. Special Provisions for Library Districts Consolidating with Any City's Existing Library Operations or Services. For any library district consolidating with any city's existing library operations or services, the amount of the dedicated property tax funded general fund and library fund budgets certified by the city under Subparagraph 803.04.h.vi., of this rule shall be added to that library district's property tax funded budget in effect at the time of the election for consolidation. This total shall be used as this district's property tax funded budget for the most recent year of the three (3) years preceding the current tax year for the purpose of deciding the property tax funded budget that may be increased as provided by Section 63-802, Idaho Code. (4-6-05)

08. Special Provisions for Cities with Existing Library Operations or Services Consolidating with Any Library District. For any city with existing library operations or services at the time of consolidation with any library district, the amount of the dedicated property tax funded library fund budget included in the certification by the city under Subparagraph 803.04.h.vi., of this rule shall be subtracted from that city's total property tax funded budget in effect at the time of the election for the consolidation. This difference shall be used as this city's property tax funded budget for the most recent year of the three (3) years preceding the current tax year for the purpose of deciding the property tax funded budget that may be increased as provided by Section 63-802, Idaho Code. (4-6-05)

09. Special Provisions for Calculating Total Levy Rate for Taxing Districts or Units with Multiple Funds. Whenever the "Calculated Levy Rate" column of the L-2 Form indicates that a levy rate has been calculated for more than one (1) fund for any taxing district or unit, the "Column Total" entry must be the sum of the levy rates calculated for each fund. Prior to this summation, the levy rates to be summed must be rounded or truncated at the ninth decimal place. No additional rounding is permitted for the column total. (4-6-05)

10. Special Provisions for School Districts' Tort Funds - Hypothetical New Construction Levy. To calculate the new construction portion of the allowed annual increase in a school district's tort fund under Section 63-802(1), Idaho Code, calculate a Hypothetical New Construction Levy. To calculate this hypothetical levy, sum the amount of the school district's tort fund levied for the prior year, the agricultural equipment replacement revenue, and the personal property replacement revenue, then divide this sum by the school district's taxable value used to determine the tort fund's levy for the prior year. For the current year, the allowed tort fund increase for new construction is this Hypothetical New Construction Levy times the current year's new construction roll value for the school district. (3-25-16)

11. Special Provisions for Interim Abatement Districts. When an interim abatement district transitions into a formally defined abatement district under Section 39-2812, Idaho Code, the formally defined abatement district shall not be considered a new taxing district as defined in Paragraph 803.01.g. of this rule for the purposes of Section 63-802, Idaho Code. For the formally defined abatement district, the annual budget subject to the limitations of Section 63-802, Idaho Code, shall be the amount of property tax revenue approved for the interim abatement district. (4-2-08)

~~12. **Special Provisions for Levies for Payment of Judgments by Order of Court.** The levy permitted pursuant to Section 63-1305A, Idaho Code, requires that the taxing district first budgets the maximum amount of property tax permitted pursuant to Section 63-802, Idaho Code, including any foregone amount. This requirement shall be deemed to have been met if, despite additional budget allowed pursuant to Section 63-802, Idaho Code, every fund used by the taxing district levies at the maximum levy rate provided by law, or, if no maximum levy rate is provided, the fund levies the maximum permitted budget amount. To the extent necessary to enable all previously accrued foregone amounts to be levied, the taxing district may need to use additional funds within which it is permitted to levy property taxes before levying as permitted pursuant to Section 63-1305A, Idaho Code. (4-4-13)~~

~~132.~~ **Cross Reference for School Districts with Tuition Funds.** School district tuition fund levies are exempt from the limitations of Section 63-802, Idaho Code. See Section 33-1408, Idaho Code. (4-11-15)

804. TAX LEVY - CERTIFICATION - URBAN RENEWAL DISTRICTS (RULE 804).
Sections 50-2908, 50-2033, 50-1903, 50-2903A, 50-2905A, 50-2913, 63-803, and 63-811, Idaho Code

01. Definitions. (4-5-00)

a. “Urban renewal district.” An urban renewal district, as referred to in Section 63-215, Idaho Code, shall mean an urban renewal area formed pursuant to an urban renewal plan adopted in accordance with Section 50-2008, Idaho Code. Urban renewal districts are not taxing districts. (4-5-00)

b. “Revenue allocation area (RAA).” A revenue allocation area (RAA) as referred to in Section 50-2908, Idaho Code, shall be the area defined in Section 50-2903, Idaho Code, in which base and increment values are to be determined. A new urban renewal plan is required when an urban renewal agency establishes a new RAA. Revenue allocation areas (RAAs) are not taxing districts. (4-5-00) ()

c. “Current base value.” The current base value of each parcel in a taxing district or unit shall be the value of that parcel on the current base assessment roll as defined under Section 50-2903, Idaho Code. Current base value does not include value found on the occupancy roll. (4-5-00)

d. “Initial base value.” The initial base value for each parcel is the sum of the taxable value of each category of property in the parcel for the year the RAA is established. In the case of annexation to an RAA, initial base value of each annexed parcel shall be the value of that parcel as of January 1 of the year in which the annexation takes place. (4-11-15)

e. “Increment value.” The increment value is the difference between the current equalized value of each parcel of taxable property in the RAA and that parcel’s current base value, provided such difference is a positive value. (4-5-00)

f. “Revenue allocation financing provision.” A revenue allocation area (RAA) shall be considered to be a revenue allocation financing provision. ()

02. Establishing and Adjusting Base and Increment Values. (4-5-00)

a. Establishing initial base value. If a parcel’s legal description has changed prior to computing initial base year value, the value that best reflects the prior year’s taxable value of the parcel’s current legal description must be determined and will constitute the initial base year value for such parcel. The initial base value includes the taxable value, as of the effective date of the ordinance adopting the urban renewal plan, of all otherwise taxable property, as defined in Section 50-2903, Idaho Code. Initial base value does not include value found on the occupancy roll. (4-5-00)

b. Adjustments to base value - general value changes. Adjustments to base values will be calculated on a parcel by parcel basis, each parcel being a unit and the total value of the unit being used in the calculation of any adjustment. Base values are to be adjusted downward when the current taxable value of any parcel in the RAA is less than the most recent base value for such parcel. In the case of parcels containing some categories of property which increase in value and some which decrease, the base value for the parcel will only decrease provided the sum of the changes in category values results in a decrease in total parcel value. Any adjustments shall be made by category and

may result in increases or decreases to base values for given categories of property for any parcel. Adjustments to base values for any real, personal, or operating property shall establish new base values from which future adjustments may be made. In the following examples the parcel's initial base value is one hundred thousand dollars (\$100,000), including Category 21 value of twenty thousand dollars (\$20,000) and Category 42 value of eighty thousand dollars (\$80,000). (4-5-00)

i. Case 1: Offsetting decreases and increases in value. One (1) year later the parcel has a one thousand dollar (\$1,000) decrease in value in Category 21 and a one thousand dollar (\$1,000) increase in Category 42 value. There is no change in the base value for the parcel. (4-5-00)

ii. Case 2: Partially offsetting decreases and increases in value. One (1) year later the parcel has a three thousand dollars (\$3,000) decrease in value in Category 21 and a one thousand dollars (\$1,000) increase in Category 42 value. The base value decreases two thousand dollars (\$2,000) to ninety-eight thousand dollars (\$98,000). (4-5-00)

iii. Case 3: Future increase in value following decreases. One (1) year after the parcel in Case 2 has a base value reduced to ninety-eight thousand dollars (\$98,000), the value of the parcel increases by five thousand dollars (\$5,000) which is the net of category changes. The base value remains at ninety-eight thousand dollars (\$98,000). (4-5-00)

c. Adjustments to base value - splits and combinations. Before other adjustments can be made, the most recent base value must be adjusted to reflect changes in each parcel's legal description. This adjustment shall be calculated as described in the following subsections. (4-5-00)

i. When a parcel has been split, the most recent base year value is transferred to the new parcels, making sure that the new total equals the most recent base year value. Proportions used to determine the amount of base value assigned to each of the new parcels shall be based on the value of the new parcels had they existed in the year preceding the year for which the value of the new parcels is first established. (4-11-15)

ii. When a parcel has been combined with another parcel, the most recent base year values are added together. (4-5-00)

iii. When a parcel has been split and combined with another parcel in the same year, the value of the split shall be calculated as set forth in Subsection 804.02.c.i. and then the value of the combination will be calculated as set forth in Subsection 804.02.c.ii. (4-5-00)

d. Adjustments to base values when exempt parcels become taxable. Base values shall be adjusted as described in the following subsections. (4-5-00)

i. Fully exempt parcels at time of RAA establishment. When a parcel that was exempt at the time the RAA was established becomes taxable, the base value is to be adjusted upwards to reflect the estimated value of the formerly exempt parcel at the time the RAA was established. (4-5-00)

ii. Partially exempt parcels losing the speculative value exemption. When a partially exempt parcel with a speculative value exemption that applies to farmland within the RAA becomes fully taxable, the base value of the RAA shall be adjusted upwards by the difference between the taxable value of the parcel for the year in which the exemption is lost and the taxable value of the parcel included in the base value of the RAA. For example, assume a parcel of farmland within an RAA had a taxable value of five hundred dollars (\$500) in the year the RAA base value was established. Assume also that this parcel had a speculative value exemption of two thousand dollars (\$2,000) at that time. Two (2) years later the parcel is reclassified as industrial land, loses the speculative value exemption, and has a current taxable value of fifty thousand dollars (\$50,000). The base value within the RAA would be adjusted upwards by forty-nine thousand five hundred dollars (\$49,500), the difference between fifty thousand dollars (\$50,000) and five hundred (\$500). The preceding example applies only in cases of loss of the speculative value exemption that applies to land actively devoted to agriculture and does not apply to timberland. Site improvements, such as roads and utilities, that become taxable after the loss of the speculative value exemption are not to be added to the base value. For example, if, in addition to the fifty thousand dollars (\$50,000) current taxable value of the undeveloped land, site improvements valued at twenty-five thousand dollars (\$25,000) are added, the amount

reflected in the base value remains fifty thousand dollars (\$50,000), and the additional twenty-five thousand dollars (\$25,000) is added to the increment value. In addition, this example applies only to land that loses the speculative value exemption as a result of changes occurring in 2010 or later and first affecting taxable values in 2011 or later. Parcels that lost speculative value exemptions prior to 2010 had base value adjustments as described in Subsection 804.02.d.iii. of this rule. (3-29-12)

iii. Partially exempt parcels other than those losing the speculative value exemption. When a partially exempt parcel, other than one subject to the speculative value exemption that applies to farmland, within the RAA becomes fully taxable, the base value of the RAA shall be adjusted upwards by the difference between the value that would have been assessed had the parcel been fully taxable in the year the RAA was established and the taxable value of the parcel included in the base value of the RAA. For example, assume a residential parcel within an RAA had a market value of one hundred thousand dollars (\$100,000), a homeowner's exemption of fifty thousand dollars (\$50,000), and a taxable value of fifty thousand dollars (\$50,000) in the year the RAA base value was established. After five (5) years, this parcel is no longer used for owner-occupied residential purposes and loses its partial exemption. At that time the parcel has a taxable value of one hundred eighty thousand dollars (\$180,000). The base value within the RAA would be adjusted upwards by fifty thousand dollars (\$50,000) to one hundred thousand (\$100,000) to reflect the loss of the homeowner's exemption, but not any other value increases. (3-29-12)

iv. Partially exempt properties for which the amount of the partial exemption changes. For partially exempt properties that do not lose an exemption, but for which the amount of the exemption changes, there shall be no adjustment to the base value, unless the current taxable value is less than the most recent base value for the property. For example, assume a home has a market value of two hundred thousand dollars (\$200,000) and a homeowner's exemption of one hundred thousand dollars (\$100,000), leaving a taxable value of one hundred thousand dollars (\$100,000), all of which is base value. The following year the homeowner's exemption limit changes to ninety thousand dollars (\$90,000), so the property's taxable value increases to one hundred ten thousand dollars (\$110,000). The base value remains at one hundred thousand dollars (\$100,000). Alternatively, assume the property in the preceding example increases in market value to two hundred twenty thousand dollars (\$220,000) and the homeowner's exemption drops to ninety thousand dollars (\$90,000) because of the change in the maximum amount of this exemption. The base value remains at one hundred thousand dollars (\$100,000). Finally, assume the property decreases in value to one hundred eighty-eight thousand dollars (\$188,000) at the same time the homeowner's exemption limit changes to ninety thousand dollars (\$90,000). The property now has a taxable value of ninety-eight thousand dollars (\$98,000), requiring an adjustment in the base value to match this amount, since it is lower than the original base value of one hundred thousand dollars (\$100,000). (3-29-12)

v. Change of exempt status. When a parcel that is taxable and included in the base value at the time the RAA is established subsequently becomes exempt, the base value is reduced by the most current value of the parcel included in the base value. If this parcel subsequently becomes taxable, the base value is to be adjusted upward by the same amount that was originally subtracted. For example, assume a land parcel had a base value of twenty thousand dollars (\$20,000). One (1) year later the parcel has a value of nineteen thousand dollars (\$19,000), so the base value is reduced to nineteen thousand dollars (\$19,000). Three (3) years later, an improvement valued at one hundred thousand dollars (\$100,000) was added. The land at this later date had a value of thirty thousand dollars (\$30,000). Both land and improvements were purchased by an exempt entity. The base would be reduced by nineteen thousand dollars (\$19,000). Five (5) years later, the land and improvement becomes taxable. The base value is to be adjusted upwards by nineteen thousand dollars (\$19,000). (4-11-15)

e. Adjustments to base values when property is removed. Base values are to be adjusted downward for real, personal, and operating property removed from the RAA. Property shall be considered removed only under the conditions described in the following subsections. (4-5-00)

i. For real property, all of the improvement is physically removed from the RAA, provided that there is no replacement of said improvement during the year the original improvement was removed. If said improvement is replaced during the year of removal, the reduction in base value will be calculated by subtracting the value of the new improvement from the current base value of the original improvement, provided that such reduction is not less than zero (0). (4-5-00)

ii. For personal property, all of the personal property associated with one (1) parcel is physically removed from the RAA or any of the personal property associated with a parcel becomes exempt. In the case of

exemption applying to personal property, the downward adjustment will first be applied to the increment value and then, if the remaining taxable value of the parcel is less than the most current base value, to the base value. Assume, for example that a parcel consists entirely of personal property with a base value of twenty thousand dollars (\$20,000) and an increment value of ninety thousand dollars (\$90,000). The next year the property receives a one hundred thousand (\$100,000) personal property exemption. The increment value is reduced to zero and the base value is reduced to ten thousand dollars (\$10,000). (4-11-15)

iii. For operating property, any of the property under a given ownership is removed from the RAA. (4-5-00)

f. Adjustments to base value for annexation. When property is annexed into an RAA, the base value in the RAA shall be adjusted upwards to reflect the value of the annexed property as of January 1 of the year in which the annexation takes effect. As an example, assume that parcels with current taxable value of one million dollars (\$1,000,000) are annexed into an RAA with an existing base value of two million dollars (\$2,000,000). The base value of the RAA is adjusted upwards to three million dollars (\$3,000,000). (4-11-15)

g. Adjustments to increment values. In addition to the adjustment illustrated in subsection (02)(e)(ii) of this rule, decreases in total parcel value below the initial base value decrease the base value for the parcel. This leads to greater increment value if the parcel increases in value in future years. For example, if a parcel with a initial base value of one hundred thousand dollars (\$100,000) decreases in value to ninety-five thousand dollars (\$95,000), but later increases to ninety-eight thousand dollars (\$98,000), an increment value of three thousand dollars (\$3,000) is generated. If the same parcel increases in value to one hundred two thousand dollars (\$102,000) after the decrease to ninety-five thousand dollars (\$95,000), the increment value would be seven thousand dollars (\$7,000). (4-11-15)

h. Apportioning operating property values. For operating property, the original base value shall be apportioned to the RAA on the same basis as is used to apportion operating property to taxing districts and units. The operating property base value shall be adjusted as required under Section 50-2903, Idaho Code. (4-5-00)

03. Levy Computation for Taxing Districts Encompassing RAAs Within Urban Renewal Districts. Beginning in 2008, levies shall be computed in one (1) of two (2) ways as follows: (5-8-09)

a. For taxing district or taxing unit funds other than those meeting the criteria listed in Subsection 804.05 of this rule, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the value of each parcel on the current base assessment roll (base value), but excluding the increment value. For example, if the taxable value of property within a taxing district or unit is one hundred million dollars (\$100,000,000) but fifteen million dollars (\$15,000,000) of that value is increment value, the levy of the taxing district must be computed by dividing the property tax portion of the district's or unit's budget by eighty-five million dollars (\$85,000,000). (5-8-09)

b. For taxing district or taxing unit funds meeting the criteria listed in Subsection 804.05 of this rule, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the increment value. Given the values in the example in Paragraph 804.03.a. of this rule, the levy would be computed by dividing the property tax portion of the fund by one hundred million dollars (\$100,000,000). (5-8-09)

04. Modification of an Urban Renewal Plan. Except when inapplicable as described in Paragraphs 804.04.a, b, or c, of this rule, #when an authorized municipality passes an ordinance modifying an urban renewal plan containing a revenue allocation financing provision, for the current value of property in the RAA shall be determined as if the modification had not occurred tax year immediately following the year in which the modification occurs, the base value of property in the RAA shall be reset by being adjusted to reflect the current taxable value of the property. All modifications to urban renewal areas and boundaries of RAAs must comply with the provisions of Rule 225 of these rules. (4-5-00)()

a. Modification by consolidation of RAAs. If such modification involves combination or consolidation of two (2) or more RAAs, the base value shall be determined by adding together independently

determined current base values for each of the areas to be combined or consolidated. The current taxable value of property in an area not previously included in any RAA shall be added to determine the total current base value for the consolidated RAA. (4-5-00)

b. Modification by annexation. (5-8-09)

i. If an RAA is modified by annexation, the current taxable value of property in the area annexed shall be added to the most current base value determined for the RAA prior to the annexation. (5-8-09)

ii. For levies described in Paragraphs 804.05.b., c., or d. of this rule approved prior to December 31, 2007, and included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or the area subject to the levy by the taxing district or unit fund after December 31, 2007, the property tax levy shall be computed by dividing the dollar amount certified for the property tax portion of the budget of the fund by the market value for assessment purposes of all taxable property within the taxing district or unit, including the increment value. The example below shows the value to be used for setting levies for various funds within an urban renewal district "A" that annexes area "B" within a school district. Area (B) was annexed after December 31, 2007. Therefore, the Area (B) increment was added back to the base for all funds shown except the tort fund. The Area (A) increment value was added back to the base for the bond and override funds which were certified or passed after December 31, 2007.

2009 Value Table	School District (base only)	\$500 Million
	RAA (A) increment	\$40 Million
	RAA <u>annexation</u> (B) increment	\$10 Million

School District Area \$500 M base <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;"> 2008 RAA Annexation (B) \$10 M Increment </div> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;"> Pre 2008 RAA (A) Boundaries \$40 M Increment </div>	2009 School Levies	
	Fund	Value for Setting Levies \$ Millions
	Tort	500
	2001 Plant	510
	2008 Bond (Passed and first levied in 2008)	550
	2009 Supplemental	550

~~(4-11-15)~~ ()

iii. An annexation permitted pursuant to section 50-2033, Idaho Code, to an RAA in existence prior to July 1, 2016 shall not change the status of the urban renewal agency or the RAA and its related plan regarding inapplicability of the base reset or attestation provisions found in section 50-2903A, Idaho Code. ()

c. Other modifications – attestation requirements. Modification resulting in adjustment of base value to reflect the current taxable value of the property within the RAA shall not be deemed to have occurred when the urban renewal agency attests to having made no modifications to a plan or is not required to attest to plan modifications. Certain urban renewal agencies are required to attest annually to having made or not made plan modifications. These include: ()

i. Urban renewal agencies that establish new RAAs on or after July 1, 2016, provided however that such agencies are only required to attest to having made or not made modifications with regard to any new RAA.

- ()
- ii. Urban renewal agencies that enact new plans including an RAA on or after July 1, 2016. ()
- d. Modifications when there is outstanding indebtedness. When any urban renewal agency attests to having had a plan modification that is not an exception identified in Paragraphs 804.04.a. or b. or c. of this rule or fails to provide the required attestation, the base value will be determined without regard to the modification, provided that the agency certifies to the tax commission by June 30 of the tax year that there is outstanding indebtedness as defined in Section 50-2903A(2), Idaho Code. In this case, the allocation of revenue to the urban renewal agency shall be limited to the amount certified as necessary to pay the indebtedness. Any additional revenue shall be distributed to each taxing district or unit in the same manner as property taxes. Such revenue shall be treated as property tax revenue for the purpose of the limitations in Section 63-802, Idaho Code. The county clerk will notify the tax commission of the amount so distributed for each year beginning July 1 of the prior year and ending June 30 of the current tax year. ()
- e. Failure to submit attestation regarding plan modification. For any urban renewal agency subject to the requirements of Section 50-2903A, Idaho Code, attestation of plan modification or attestation that there has been no plan modification is required to be made to the State Tax Commission by June 30 each year. Except as provided in Paragraph 804.04.d. of this rule, if such agency fails to provide the required attestation, the state tax commission will proceed to reset the base value or limit allocation of property tax to the urban renewal agency as otherwise required in Section 50-2903A, Idaho Code. Provided there is no new plan, an urban renewal agency with a plan including one or more revenue allocation financing provisions (RAAs) in existence prior to July 1, 2016 shall only be required to provide this attestation or be subject to base resetting or other limitations for failure to submit this attestation with respect to new RAAs formed on or after July 1, 2016. If such an agency develops a new plan, on or after July 1, 2016, or provides for a new RAA under an existing plan, the agency shall be subject to the attestation requirements and other provisions of Section 50-2903A, Idaho Code, with respect to any RAAs formed July 1, 2016 or later. ()
- f. Notice of actions related to base reset or revenue allocation limitations. ()
- i. The State Tax Commission will notify any urban renewal agency within thirty (30) days of the time the State Tax Commission receives an attestation that an urban renewal plan has been modified, or by July 30 in any year in which an attestation is required but none is received, of the State Tax Commission's intent to initiate the process to reset the base value in the following tax year. Said notice will be provided to affected county commissioners and city officials. ()
- ii. In the case of base reset due to failure to attest to a modification or to having made no modification in an urban renewal plan, despite being required to provide this attestation, the agency and county and city officials will be so notified and will be given an opportunity to provide the necessary attestation. This further notice will provide that, if the State Tax Commission has not received the attestation by December 31 of the tax year, the base will be reset in the immediate following year. ()
- iii. In the case of a revenue allocation limitation pursuant to Section 50-2913, Idaho Code, notice will be provided to the agency, county, and city officials including the county assessor and county clerk, within thirty (30) days of the due date of the plan or plan update. ()
- iv. In the case of a revenue allocation limitation due to a plan modification but outstanding indebtedness, notice will be provided to the agency and county and city officials, including the county assessor and county clerk, within thirty (30) days of receipt by the State Tax Commission of the certification of the amount needed to repay the indebtedness. ()
- v. Once decisions about base reset or revenue allocation limitations are final, additional notice will be sent to the agency and county and city officials, including the county assessor and county clerk, within thirty (30) days of any such final decision. Said notice will include an identification of the year in which the reset or revenue allocation limitation will take effect and the amount of any revenue allocation limitation. ()

05. Criteria for Determining Whether Levies for Funds Are to Be Computed Using Base Value or Market Value for Assessment Purposes. Beginning in 2008, levies to be certified for taxing district or unit funds

meeting the following criteria or used for any of the following purposes will be computed as described in Paragraph 804.03.b. of this rule. (5-8-09)

a. Refunds or credits pursuant to Section 63-1305, Idaho Code, and any school district judgment pursuant to Section 33-802(1), Idaho Code, provided the refunds, credits, or judgments were pursuant to actions taken no earlier than January 1, 2008; (5-8-09)

b. Voter approved overrides of the limits provided in Section 63-802, Idaho Code, provided such overrides are for a period not to exceed two (2) years and were passed after December 31, 2007, or earlier as provided in the criteria found in Paragraph 804.05.e.; (5-8-09)

c. Voter approved bonds and plant facilities reserve funds passed after December 31, 2007, or earlier as provided in the criteria found in Paragraph 804.05.e.; (5-8-09)

d. Voter approved school or charter school district temporary supplemental maintenance and operation levies passed after December 31, 2007; or (3-29-10)

e. Levies described in Paragraphs 804.05.b., c., or d. approved prior to December 31, 2007, and included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or the area subject to the levy by the taxing district or unit fund after December 31, 2007; (3-29-10)

f. Levies authorized by Section 33-317A, Idaho Code, known as the cooperative service agency school plant facility levy. (3-29-10)

g. Levies authorized by Section 33-909, Idaho Code, known as the state-authorized plant facility levy. (4-11-15)

h. Levies authorized by Section 33-805, Idaho Code, known as school emergency fund levies. ~~(3-25-16)~~()

06. Setting Levies When There is a De-annexation From an RAA. In any de-annexation from an RAA, levies will be set using the base value and, as indicated in Subsection 804.05 of this rule, the appropriate amount of increment value associated with the parcels and operating property remaining in the RAA after the de-annexation, provided that the de-annexation is in effect no later than September 1 of the current tax year and provided further that the de-annexation is approved by the State Tax Commission in accordance with Rule 225 of these rules. ()

067. Cross Reference. The county auditor shall certify the full market value by taxing district as specified in Rule 995 of these rules. See also Rule 802 of these rules for calculation of new construction given de-annexation from an RAA and see Rule 805 of these rules for penalties for failure to submit plans. ~~(4-2-08)~~()

805. PENALTY FOR FAILURE TO COMPLY WITH REPORTING REQUIREMENTS (RULE 805).
Sections 63-802A, 50-2913, and 67-450E, Idaho Code

01. Property Tax Limitation Penalties for Noncompliance. Penalties shall be applied to any taxing district that fails, by April 30 of each year, to provide each appropriate county clerk with written notification of the budget hearing information required pursuant to Section 63-802A, Idaho Code, or, beginning in 2015, that is found by September 1 to be out of compliance with the requirements of section 67-450E, Idaho Code. There shall be no increase in the portion of the budget subject to the limitations of Section 63-802, Idaho Code. This restriction shall apply to otherwise available budget increases from the three percent (3%) growth factor, new construction or change of land use classification, and annexation. There shall also be no increase resulting from adding previously accrued foregone increase amounts to the budget and the total accrued foregone amount shall not change for a noncomplying district. (4-11-15)

02. Exceptions. Voter approved budget increases permitted pursuant to Section 63-802(4), Idaho Code, shall be allowed. (3-15-02)

03. County Clerks to Submit Lists. By the fourth Monday of May, each county clerk shall submit to the state tax commission a list of taxing districts out of compliance with the requirements of Section 63-802A, Idaho Code, along with other documents required pursuant to Rule 803 of these rules and Section 63-808, Idaho Code. (4-11-15)

04. Notification by state tax commission. By September 3 each year, the state tax commission will provide each county clerk a list of all taxing districts in the county that are subject to the penalties in Section 63-802A, Idaho Code. The state tax commission will also notify each county clerk when a previously noncomplying taxing district is found to be in compliance with the requirements of Section 67-450E, Idaho Code. Such notification will be done by September 3 of the year in which the compliance status is re-established. (4-11-15)

05. Additional Penalties. For taxing districts that fail to comply with the requirements of Section 67-450E, Idaho Code, additional penalties affect the distribution of sales tax money for which the district may be eligible. See Rule 995 of these rules. (4-11-15)

06. Applicability to Urban Renewal Agencies. Urban renewal agencies failing to annually submit to the State Tax Commission plans as required pursuant to Section 50-2913, Idaho Code, shall be subject to penalties found in that Section. ()

a. Urban renewal agencies having once submitted such plans, and having made no modification or amendment to such plans, may, by December 1 each year, attest to the currency of the previously submitted plan in lieu of re-submitting that plan. ()

b. Providing the State Tax Commission with, and updating links to, plans on urban renewal agency websites shall constitute compliance with submittal requirements. ()

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-1603

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 63-105A and 63-802, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 020: Value of Recreational Vehicles for Annual Registration and Taxation of Unregistered Recreational Vehicles – The “Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association” is no longer published. This rule deletes the National Automobile Dealers Association Guides from this rule and gives direction to the appraisers to value recreational vehicles at market value when the sales price is not known.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 6, 2016 Idaho Administrative Bulletin, [Volume 16-7, page 81](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest, (208) 334-7742, alan.dornfest@tax.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 5th Day of August, 2016.

Alan Dornfest
Tax Policy Supervisor
State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7742

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1603
(Only Those Sections With Amendments Are Shown.)

020. VALUE OF RECREATIONAL VEHICLES FOR ANNUAL REGISTRATION AND TAXATION OF UNREGISTERED RECREATIONAL VEHICLES (RULE 020).

Section 49-446, Idaho Code

01. Value of Recreational Vehicle For Registration Fees. Beginning with registration fees for calendar year 2004, the County assessors shall administer and collect the recreational vehicle (RV) registration fee based on the market value calculated from the following depreciation schedule.

DEPRECIATION SCHEDULE FOR RVS				
	Travel/ Camp Trailers	Campers	Van Conversions	Motor Homes
Age	Percent Good	Percent Good	Percent Good	Percent Good
0	100	100	100	100
1	86	83	85	85
2	76	76	74	77
3	66	64	62	68
4	62	60	52	62
5	59	55	47	59
6	56	54	40	55
7	55	52	35	54
8	50	49	32	51
9	49	44	30	48
10	43	40	27	44
11	41	36	23	40
12	38	33	19	36
13	37	30	14	32
14	36	27	13	31
15	31	23	12	28

To use this depreciation schedule, multiply the sales price or the market value of the RV ~~or the~~ adjusted by the percentage, if applicable ~~value~~ from Subsection 020.02 or 020.03 below, by the appropriate "Percent Good" based on the "Age" and type of RV. Decide the "Age" based on the year of purchase as follows: purchased in the current year equals "Age" zero (0), purchased in the previous year equals "Age" one (1), etc. For example, in year 2004, the "Age" for an RV purchased in 2004 is zero (0), the "Age" for an RV purchased in 2003 is one (1), the "Age" for an RV purchased in 2002 is two (2), the "Age" for an RV purchased in 2001 is three (3), etc. For any RV still in use and purchased fifteen (15) or more years ago, calculate the minimum market value using the lowest depreciation rate for

the correct RV type. ~~This depreciation schedule is based on the "Recreation Vehicle Guide of the National Automobile Dealers Association" and the "Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association" approved by the State Tax Commission as required under Section 49-446, Idaho Code. The State Tax Commission will maintain the information on which this depreciation schedule is based while it is in use and for a minimum of three (3) years after it has been replaced. If the purchase price for the RV is not known, use the approved edition of the "Recreation Vehicle Guide of the National Automobile Dealers Association" or the "Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association" as referenced in Rule 006 of these rules to determine the market value.~~ (5-3-03)()

02. Value of Motor Home or Van Conversion For Registration Fees. The value of any motor home or van conversion used to calculate the registration fee shall exclude any chassis value. Beginning with the registration fees for calendar year 2004, the county assessor shall use the following schedule of valuation factors to calculate the value of the motor home or van conversion excluding the chassis value.

Motor Home/Van Type	Valuation Factor
Mini Motor Home (MMH)	50%
Motor Home (MH)	60%
Front Engine Diesel	45%
Rear Engine Diesel	58%
Van Conversions	25%

Multiply the motor home or van conversion's total value by the appropriate factor to calculate the value excluding the chassis value. (5-3-03)

03. Value of Vehicles Designed For Combined RV and Non-RV Uses For Registration Fees. For vehicles designed to have part of the vehicle for RV use and other parts of the vehicle for non-RV uses like transporting horses or other cargo, the value of the RV to be used to calculate the registration fee on or after January 1, 2015 is fifty percent (50%) of the sales price. (3-20-14)

04. Assessment Notice Mailed or Assessment Canceled. If after August 31, the required annual registration fee has not been paid, a taxpayer's valuation assessment notice shall be mailed to the owner of the recreational vehicle. If the registration fee is paid before the fourth Monday of November, the assessor shall cancel the assessment. (5-3-03)

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-1605

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-105A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Property Tax Rule 006 updates the incorporation by reference section to the latest versions of the Official Railway Equipment Register and removes two documents related to automobiles, van/truck conversion and limousine appraisals.

Property Tax Rule 809 extends the time period that notices of correction for unintentional clerical, mathematical, or electronic errors in erroneous levies, under Section 63-810, Idaho Code, will be received by the Commission.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the provisions of these rules are of a simple nature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The "Official Railway Equipment Register" is published quarterly, each register shows different changes that are made including but not limited to: 1) reporting railcar marks transferred from one company to another; 2) new reporting railcar marks; 3) new and eliminated registrants; and 4) company name changes. The dates of the Official Railway Equipment Register listed in Paragraph 006.02.c. are being changed to reflect the most current version of the register.

Idaho State Tax Commission (ISTC) uses this information to validate what is reported on the operator statements from the private railcar companies as well as establishing ownership of railcar marks that were reported to the ISTC from the railroads that have not been filed by the private railcar company. Using the address information provided by the register, we send out assessments & billing for railcars under \$500,000.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest at (208) 334-7742 or alan.dornfest@tax.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 5th Day of August, 2016.

Alan Dornfest
Tax Policy Supervisor
State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7742

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1605
(Only Those Sections With Amendments Are Shown.)

006. INCORPORATION BY REFERENCE (RULE 006).

Unless provided otherwise, any reference in these rules to any document identified in Rule 006 of these rules shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term “documents” includes codes, standards, or rules adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-3-03)

01. Availability of Reference Material. Copies of the documents incorporated by reference into these rules are available at the main office of the State Tax Commission as listed in Rule 005 of these rules or can be electronically accessed as noted in Subsection 006.02 of this rule. (5-8-09)

02. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (5-3-03)

a. “Standard on Ratio Studies” published in 2013, “Standard on Digital Cadastral Maps and Parcel Identifiers” published in 2015, “Standard on Mass Appraisal of Real Property” published in 2012, “Standard on Verification and Adjustment of Sales” published in 2010, all published by the International Association of Assessing Officers. These documents can be electronically accessed at http://www.iaao.org/wcm/Resources/Publications_access/Technical_Standards/wmc/Resources_Content/PubsTechnical_Standards.aspx?hkey=93ba7851-659f-4d02-80a2-9a52ef21f995 which was last accessed and verified on June 22~~0~~, 201~~5~~~~6~~. ~~(3-25-16)~~()

~~**b.** “Recreation Vehicle Guide of the National Automobile Dealers Association” published in 2015 for the September through December period by the National Appraisal Guides Incorporated. (3-25-16)~~

~~**c.** “Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association” published in 2015 for the September through December period by the National Appraisal Guides Incorporated. (3-25-16)~~

~~**b.** “Official Railway Equipment Register” published for the last three (3) quarters in 201~~5~~~~6~~ and the first quarter in 201~~6~~~~7~~ by R. E. R. Publishing Corporation, Agent as a publication of UBM Global Trade. (3-25-16)~~()

~~**c.** “Forest Habitat Types of Northern Idaho: A Second Approximation” published by the Government Printing Office for the U. S. Forest Service in 1991, General Technical Report INT-236, written by Cooper, Stephen V., Neiman, Kenneth E., Rev, David W., and Roberts, Kenneth E. (4-6-05)~~

~~**d.** “Forest Habitat Types of Central Idaho” published by the Government Printing Office for the Intermountain Forest and Range Experimentation Station of the U. S. Forest Service in 1981, General Technical Report INT-114, written by Kittams, Jay A., Pfister, Robert D., Ryker, Russell A., and Steele, Robert. (5-3-03)~~

~~**e.** “Yield of Even-Aged Stands of Ponderosa Pine” published by the Government Printing Office for the U. S. Department of Agriculture in 1938, Technical Bulletin No. 630. (5-3-03)~~

f. “Second-Growth Yield, Stand, and Volume Table for the Western White Pine Type” published by the Government Printing Office for the U. S. Department of Agriculture in 1932, Technical Bulletin No. 323. (5-3-03)

g. “Manual of Surveying Instructions” published by the Federal Bureau of Land Management and the Public Land Survey System Foundation in 2009. (4-4-13)

03. Effective Date. The effective date of this rule is January 1, 201~~6~~7. (~~3-25-16~~)()

(BREAK IN CONTINUITY OF SECTIONS)

809. CORRECTION OF ERRONEOUS LEVY (RULE 809).
Sections 63-809 and 63-810, Idaho Code

01. Errors Discovered by the Fourth Monday in October. When the State Tax Commission receives by the fourth Monday in October from a board of county commissioners notice of corrections for unintentional clerical, mathematical, or electronic errors under Section 63-810, Idaho Code, the State Tax Commission shall make the corrections to any approved levies by the fourth Monday in October. (4-2-08)

02. Errors Discovered After the Fourth Monday in October. When the State Tax Commission receives after the fourth Monday in October and prior to the following ~~January 30~~ February 15 notices of corrections for any unintentional errors, as referenced in Subsection 809.01 of this rule, the State Tax Commission shall make the corrections and approve the appropriate corrected levies within one (1) week. (~~4-2-08~~)()

03. Cross Reference. For information on reporting of corrections for unintentional clerical, mathematical, or electronic errors, see Sections 63-809 and 63-810, Idaho Code, and Rule 509 of these rules. (4-2-08)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.06 - RULES GOVERNING ALLOWABLE VEHICLE SIZE

DOCKET NO. 39-0306-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This action is authorized pursuant to Section 40-312, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The changes to this rule are being made to ensure congruency with the FAST Act (2015) and Idaho Senate Bill 1261 (2016). The specific details of this rule are in Idaho statute (Section 49-1010, Idaho Code); therefore, for efficiency purposes and to avoid possible confusion, ITD has simply referenced the pertinent Idaho Code section in rule that establishes permissible load overhang. This code section was amended by the 2016 Idaho legislature and is now up-to-date.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the change itself is simple in nature. It also confers a benefit to the industry by having the specific details of allowable vehicle overhang only in one place (Idaho Code). Although this rule was not formally negotiated, it was part of ITD's rule package presented to the Idaho Transportation Board and stakeholders, open for public comments, multiple times over the last several months.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, please contact Reymundo Rodriguez, Motor Carrier Manager, at (208) 334-8699.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 2nd Day of August, 2016.

Ramón S. Hobdey-Sánchez
Governmental Affairs Program Specialist
Idaho Transportation Department
3311 W. State Street
PO Box 7129
Boise ID 83707-1129
Phone: (208) 334-8810
ramon.hobdey-sanchez@itd.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0306-1601
(Only Those Sections With Amendments Are Shown.)

300. LOAD OVERHANG.

The overhang or extension of a load shall not extend: beyond the limits as set forth in Section 49-1010, Idaho Code.
(~~9-14-92~~)()

- ~~01. **Front.** More than four (4) feet beyond the front of a vehicle other than an automobile transporter or a boat transporter. (4-24-92)~~
- ~~02. **Rear.** More than ten (10) feet beyond the end of a vehicle other than an automobile transporter or a boat transporter. (5-8-09)~~
- ~~03. **Right Side.** More than six (6) inches outside the right fender of a passenger vehicle. (4-24-92)~~
- ~~04. **Left Side.** Outside the left fender of a passenger vehicle. (4-24-92)~~
- ~~05. **Auto or Boat Transporter.** More than seven (7) feet front and rear combined length of an automobile transporter or boat transporter. (4-24-92)~~

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT
39.03.11 - RULES GOVERNING OVERLEGAL PERMITTEE RESPONSIBILITY
AND TRAVEL RESTRICTIONS

DOCKET NO. 39-0311-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This action is authorized pursuant to Section 40-312, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held via video-conferencing at the following locations:

Wednesday, September 28th, 2016 - 4:00 to 7:00 pm (MDT)	
Central Office - HQ 3311 W. State Street Boise, ID 83707	District 1 600 W. Prairie Ave. Coeur d'Alene, Idaho 83815
District 2 2600 Frontage Road Lewiston, ID 83501	District 4 216 S. Date Street Shoshone, ID 83352
District 5 5151 S. 5th Ave. Pocatello, ID 83204	District 6 206 N. Yellowstone Ave. Rigby, ID 83442

Each location will have live video-conferencing and be connected to the auditorium and the Idaho Transportation Department headquarters.

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The modifications being made to this rule address truck permitting for non-reducible, oversized loads traveling on U.S. 12 in northern Idaho, between milepost 74 and milepost 174. Specifically, loads that fall under one of the following criteria: 1) exceeds sixteen (16) feet wide and/or one hundred and fifty (150) feet in length; 2) load movement requires longer than twelve (12) hours to travel through the designated mileposts; or 3) load movement requires physical modification of the roadway or adjacent vegetation to facilitate passage beyond normal highway maintenance.

Recent federal litigation raised new considerations for certain oversize vehicles and loads traveling through the Nez Perce Forest on U.S. 12. The federal district court held that the United States Forest Service has concurrent jurisdiction of vehicles and loads traveling through the Nez Perce Forest. The Forest Service responded and stated it would review all oversize vehicles/loads greater than 16 feet wide and/or 150 feet in length when such vehicles or loads travel on US 12 between milepost 74 and milepost 174.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not

conducted because affected interests are not likely to reach consensus.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, please contact Reymundo Rodriguez, Motor Carrier Manager, (208) 334-8699.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 30, 2016.

DATED this 22nd Day of August, 2016.

Ramón S. Hobdey-Sánchez
Governmental Affairs Program Specialist
Idaho Transportation Department
3311 W. State Street
PO Box 7129
Boise, ID 83707-1129
Phone: (208) 334-8810
ramon.hobdey-sanchez@itd.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0311-1601
(Only Those Sections With Amendments Are Shown.)

200. TIME OF TRAVEL RESTRICTIONS FOR OVER LEGAL LOADS.

Oversize loads may be transported on Idaho Highways subject to the following conditions: (10-2-89)

01. Red-Coded Routes. Daylight travel until 2 p.m. on Friday, no Saturday, no Sunday. Due to low traffic volumes on these routes early in the mornings of Saturday and Sunday, single trip permits may be issued for dawn to 8 a.m. If the movement is not completed by 8 a.m. the permittee will be required to safely park and not proceed until the next day. (4-5-00)

02. Black-Coded Routes. Loads not in excess of ten (10) feet wide, one hundred (100) feet long or fourteen (14) feet six (6) inches high may travel twenty-four (24) hours per day, seven (7) days per week; loads in excess of ten (10) feet wide, one hundred (100) feet long or fourteen (14) feet six (6) inches high may travel daylight hours seven (7) days per week. (12-26-90)

03. Interstate. Loads not in excess of ten (10) feet wide, one hundred and twenty (120) feet long or fourteen (14) feet six (6) inches high may travel twenty-four (24) hours per day, seven (7) days per week; loads in excess of ten (10) feet wide, one hundred and twenty (120) feet long or fourteen (14) feet six (6) inches high may travel daylight hours, seven (7) days per week. (4-5-00)

04. Nez Perce - Clearwater Forest Safety and Travel Requirements. As per a Federal Court decision, the United States Forest Service has the duty to regulate oversize loads traveling through the Nez Perce - Clearwater Forest (US 12 from milepost 74 to 174). ()

a. The Forest Service has issued the following written criteria to determine which "oversize" loads will be subject to Forest Service review: ()

- i. Load exceeds sixteen (16) feet wide, and/or one hundred and fifty (150) feet in length. ()
- ii. Load movement requires longer than twelve (12) hours to travel through the designated mileposts. ()
- iii. Load movement requires physical modification of the roadway or adjacent vegetation to facilitate passage beyond normal highway maintenance. ()
- b. For those loads meeting any of the criteria above there will be additional safety requirements for the movement of such loads on US 12 from milepost 74 to 174. These additional safety requirements include, at a minimum, the following: ()
 - i. Ambulances and possible law enforcement escorts to ensure public safety. ()
 - ii. Safety lighting will be addressed so as to not create a safety hazard to the traveling public. ()
 - iii. Loads cannot utilize turnouts - which are designated for recreational vehicles for non-emergency parking. ()
 - iv. Time of travel will be determined based on traffic volume and best interest of the public. Night time movement may be required and/or movement may be restricted during holidays or weekends. ()
 - v. Loads require a vehicle safety inspection by the Idaho State Police or equivalent agency of another jurisdiction prior to issuance of a permit. ()
 - vi. ITD shall monitor the loads as they travel the highway and ensure only one (1) load shall operate on this section of highway at any one time. ()

045. Additional Restrictions. (8-25-94)

- a. Red-Coded Routes: No travel for any load after 2 p.m. on the day preceding a holiday or holiday weekend. A holiday weekend occurs as three (3) consecutive days, when a designated holiday occurs on a Friday or Monday, or when the designated holiday occurs on a Saturday or Sunday, in which case the preceding Friday or the following Monday shall be included in such three (3) day holiday weekend. Travel may be resumed at dawn on the day following the holiday or holiday weekend. (4-5-00)
- b. Black-Coded Routes and Interstate Routes: Loads in excess of ten (10) feet wide, one hundred (100) feet long or fourteen (14) feet six (6) inches high may not travel after 4:00 p.m. on the day preceding a holiday; travel may be resumed at dawn on the day following the holiday. (4-5-00)
- c. The following days are designated as holidays: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas. (8-25-94)
- d. Additional restrictions relating to movement of buildings and houses are listed in IDAPA 39.03.18, “Rules Governing Overlegal Permits for Relocation of Buildings or Houses,” Section 400. (4-5-00)
- e. Other time of travel restrictions may be noted on the permit due to special circumstances.(8-25-94)

056. Hours Of Darkness. Hours are defined as extending from one-half (1/2) hour after sundown to one-half (1/2) hour before sun rise or at any other time when visibility is restricted to less than five hundred (500) feet. (4-5-00)

067. Heavy Commuter Traffic Restrictions. The movement of oversize permitted vehicles or loads which are in excess of thirteen (13) feet in width, may be prohibited from movement on highways all state and interstate within one (1) mile of the city limits of the following cities: Boise, Caldwell, Coeur d’Alene, Eagle,

Emmett, Idaho Falls, Meridian, Middleton, Nampa, Pocatello, Star, Twin Falls, Garden City, and Chubbuck at times of heavy commuter traffic. Authorized oversize permitted vehicles operating during hours of heavy commuter traffic shall be restricted to the furthest right hand lane. Emergency movement of vehicles/loads responding to imminent hazards to persons or property shall be exempt from the provisions of Section 200. Unless otherwise defined on the permit, the times of heavy commuter traffic shall be considered to be 6:30 a.m. to 8:30 a.m., and 4 p.m. to 6 p.m. Monday through Friday except as noted under Holiday restrictions. Restrictions to the operation of oversize permitted vehicles and/or loads during times of heavy commuter traffic shall appear either on the face of the permit or in the attachments for annual permits. (3-30-07)

078. Hazardous Travel Conditions Restrictions. Extreme caution in the operation of permitted vehicle combinations shall be exercised when hazardous conditions exist. The movement of overlegal vehicles and/or loads by overlegal permit shall be prohibited and otherwise valid permits shall automatically become invalid enroute when travel conditions become hazardous due to ice, snow or frost; when visibility is restricted to less than five hundred (500) feet by fog, dust, smoke or smog or other atmospheric conditions. (3-10-05)

089. Delaying Movement. Enforcement personnel responsible for any section of highway may delay movements and carry out enforcement action for violations involving overlegal permit operations. (4-5-00)

0910. Map Resources. The Pilot/Escort Vehicle and Travel Time Requirement Map is available at the Idaho Transportation Department Overlegal Permit Office, and Ports of Entry, and District Offices. (4-5-00)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.12 - RULES GOVERNING SAFETY REQUIREMENTS OF OVERLEGAL PERMITS

DOCKET NO. 39-0312-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This action is authorized pursuant to Section 40-312, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The modifications to this rule address vehicle inspections, driver training and brakes. Specifically, the rule identifies a requirement for owner inspections in compliance with 49 CFR 396.17 and 396.19. Drivers are to meet all special training requirements for longer combination vehicles as outlined in 49 CFR Part 380. However, there are some exemptions in place for these two new requirements.

Additionally, brakes shall meet the Federal Motor Carrier Safety Administration Regulations and shall be maintained to the Federal Motor Vehicle Safety Standards No. 121 in effect at the time the commercial motor vehicle was manufactured. No vehicle or vehicle combinations shall operate with mixed brake systems between tractor and trailers.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 2016 Idaho Administrative Bulletin, [volume 16-5, pages 68-69](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Each year, the Idaho State Police (ISP) adopt varying regulations of the Federal Motor Carrier Safety Administration. ITD has worked in partnership with ISP throughout this negotiated rulemaking and is only referencing federal regulations which are or will be adopted by ISP. The federal regulations/standards now being cited in ITD's administrative rule deal with self-certified owner inspections, driver training and brake standards.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, please contact Reymundo Rodriguez, Motor Carrier Manager, at (208) 334-8699.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 4th Day of August, 2016.

Ramón S. Hobdey-Sánchez
Governmental Affairs Program Specialist
Idaho Transportation Department
ramon.hobdey-sanchez@itd.idaho.gov

PO Box 7129
3311 W. State Street
Boise ID 83707-1129
Phone: (208) 334-8810

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0312-1601
(Only Those Sections With Amendments Are Shown.)

001. TITLE AND SCOPE.

01. **Title.** This rule shall be cited as IDAPA 39.03.12, "Rules Governing Safety Requirements of Overlegal Permits," IDAPA 39, Title 03, Chapter 12. (4-5-00)

02. **Scope.** This rule states the requirements for vehicle inspections, brakes, pilot cars, oversize load signs, red warning flags, and lighting. (4-5-00)()

(BREAK IN CONTINUITY OF SECTIONS)

011. -- ~~049~~. (RESERVED)

050. SAFETY INSPECTION REQUIREMENTS FOR OVERSIZE VEHICLES AND/OR LOADS.

01. **Inspections.** All vehicles, tractors, trailers, and dolly converters operating under the authority of an overlegal permit issued by the Department must have a valid annual inspection at the time a permit is issued. The inspection shall be completed in compliance with 49 CFR Part 396.17. ()

02. **Inspectors.** Inspectors completing required annual inspections shall meet the certifications requirement in 49 CFR 396.19 and brake inspector qualification in 49 CFR 396.25. ()

03. **Drivers.** All drivers shall meet the special training requirements for Longer Combination Vehicles as outlined in 49 CFR Part 380. ()

04. **Motor Carriers.** By applying for an overlegal permit, motor carriers self-certify that they have performed inspections as set forth in 49 CFR Part 396.17. ()

05. **Exemption.** Oversize vehicles and/or loads operating under an exemption outlined in §67-2901B(2), Idaho Code, are exempt from this safety inspection requirement. ()

051. -- 059. (RESERVED)

060. SAFETY STANDARDS FOR BRAKES.

Brakes shall meet the Federal Motor Carrier Safety Regulations and shall be maintained to the Federal Motor Vehicle Safety Standards No. 121 in effect at the time the commercial motor vehicle was manufactured. No vehicle or vehicle combinations shall operate with mixed brake systems between tractor and trailers. ()

061. -- 099. (RESERVED)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.22 - RULES GOVERNING OVERLEGAL PERMITS FOR EXTRA-LENGTH, EXCESS WEIGHT, AND UP TO 129,000 POUND VEHICLE COMBINATIONS

DOCKET NO. 39-0322-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This action is authorized pursuant to Section 40-312, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The modifications to this rule address commercial motor vehicle brakes. Specifically, that the brakes on all commercial motor vehicles must meet and be maintained to the Federal Motor Vehicle Safety Standards No. 121 in effect at the time the commercial motor vehicle was manufactured. Additionally, no vehicle or vehicle combinations shall operate with mixed brake systems between tractor and trailers. There is also new language that addresses driver training requirements in accordance with 49 CFR Part 380. This rule deals with reducible loads exceeding 80,000 pounds.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 2016 Idaho Administrative Bulletin, [volume 16-5, pages 68-69](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: this administrative rule does reference 49 CFR Part 380 "Special Training Requirements" as well as Federal Motor Vehicle Safety Standards No. 121 which deals with air brake systems. Reference to these federal regulations is the result of ITD's negotiated rulemaking and each one directly addresses safety on Idaho's highway system.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, please contact Reymundo Rodriguez, Motor Carrier Manager, at (208) 334-8699.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 3rd Day of August, 2016

Ramón S. Hobdey-Sánchez
Governmental Affairs Program Specialist
Idaho Transportation Department
3311 W. State Street
PO Box 7129, Boise ID 83707-1129
Phone: (208) 334-8810
ramon.hobdey-sanchez@itd.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0322-1601
(Only Those Sections With Amendments Are Shown.)

200. DESIGNATED ROUTES FOR VEHICLE COMBINATIONS UP TO ONE HUNDRED TWENTY-NINE THOUSAND (129,000) POUNDS.

In addition to the requirements listed in Sections 300 and 400, vehicle combinations operating up to one hundred twenty-nine thousand (129,000) pounds, must meet the following requirements: (7-1-13)

01. Brakes. All axles shall be equipped with brakes that meet the Federal Motor Carrier Safety Regulations and shall be maintained to the Federal Motor Vehicle Safety Standards No. 121 in effect at the time the commercial motor vehicle was manufactured. No vehicle or vehicle combinations shall operate with mixed brake systems between tractor and trailers. (7-1-13)()

02. Permits. Permits will be vehicle specific and will be in addition to any extra length and excess weight permit for operation of vehicle combinations at weights up to one hundred five thousand five hundred (105,500) pounds. (7-1-13)

03. Designated Routes. All designated state approved routes for vehicle combinations to operate at weights above one hundred five thousand five hundred (105,500) pounds will be identified on the “Designated Routes Up to 129,000 Pound Map” which is available at the Idaho Transportation Department. (4-1-14)

a. Black-Coded Routes. Interstate system routes and specified interchanges providing access to approved breakdown areas located in close proximity to the Interstate system (black-coded routes). A vehicle combination operating on routes in this category shall be designed and assembled in such a manner that its off-tracking may exceed six point five zero (6.50) feet but shall not exceed eight point seven five (8.75) feet when computed. Specified interchanges providing access to approved breakdown areas are required to be used by combinations that exceed six point five zero (6.50) feet off-tracking. The specified interchanges will be authorized for either combinations in excess of six point five zero (6.50) feet off-tracking, but not in excess of seven (7) feet off-tracking, or for combinations in excess of seven (7) feet off-tracking but not in excess of eight point seven five (8.75) feet off-tracking. ()

b. Magenta-Coded Routes. Routes for combinations of vehicles not exceeding one hundred fifteen (115) feet in overall length including load overhang (magenta-coded routes). A vehicle combination operating on routes designated for up to one hundred fifteen (115) feet shall be designed and assembled in a manner whereby its maximum off-tracking will not exceed six point five zero (6.50) feet on a one hundred sixty-five (165) foot radius when computed. (3-25-16)

c. Brown-Coded Routes. Routes for combinations not exceeding ninety-five (95) feet in overall length including load overhang (brown-coded routes). A vehicle combination operating on routes designated for up to ninety-five (95) feet shall be designed and assembled in a manner whereby its maximum off-tracking will not exceed five point five zero (5.50) feet on a one hundred sixty-five (165) foot radius when computed. (3-25-16)

d. Routes for combinations operating on non-state maintained highways (orange-coded routes). Local jurisdictions adding, modifying or deleting non-state maintained routes for vehicle combinations operating up to one hundred twenty-nine thousand (129,000) pounds shall provide the route information to the department. (4-1-14)

04. Requests for Adding Idaho Transportation Department Maintained Non-Interstate Routes. Routes not currently designated to operate at up to one hundred twenty-nine thousand (129,000) pounds may be added as follows: (4-1-14)

a. Request Form Submission. The request form (ITD form number 4886) will be completed and submitted to the Idaho Transportation Department Office of the Chief Engineer by the requestor. The requestor will forward the form to the adjacent local jurisdictions. (4-1-14)

- b. Request Review/Analysis Process. (4-1-14)
- i. Once submitted, the request will be reviewed for completeness and the department's analysis will be completed for engineering and safety criteria. The criteria shall include assessment of pavement and bridges to allow legal tire, axle, and gross weight limits as per Section 49-1001 and 49-1002, Idaho Code, and route off-track requirements which includes road width and curvature. Additional consideration shall be given to traffic volumes and other safety factors. (4-1-14)
- ii. Once the analysis is completed, the request will be submitted to the Chief Engineer, who will report to the Idaho Transportation Board Sub-committee. (4-1-14)
- iii. The Idaho Transportation Board Sub-committee will make a recommendation (proceed to hearing, reject, or request additional information) to the Idaho Transportation Board based upon the department's analysis. (4-1-14)
- iv. If the Idaho Transportation Board recommends that the request proceed to hearing, it shall instruct the Chief Engineer to schedule a hearing in the district(s) where the requested route is located. The hearing will be conducted pursuant to the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code. (4-1-14)
- v. The Chief Engineer or designee will conduct the hearing(s) and make a determination after the hearing(s) are held. Following the determination, the Chief Engineer will issue Findings and a Preliminary Order, hereafter referred to as Preliminary Order. (4-1-14)
- vi. The Department will notify the requestor of the Chief Engineer's Preliminary Order and post to the Idaho Transportation Department Web site. (4-1-14)
- vii. An appeal of the Preliminary Order may be made pursuant to the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code. The appeal shall be made to the Director of the Idaho Transportation Department. (4-1-14)
- c. Local Highways Approved for Travel Up to 129,000 pounds. Local routes will be added or removed on the "Designated Routes Up to 129,000 Pound Map" when information and approval is provided to the Department by the local jurisdiction having authority over the local route. (4-1-14)

201. -- 299. (RESERVED)

300. OPERATING REQUIREMENTS FOR EXTRA-LENGTH, EXCESS WEIGHT, AND UP TO ONE HUNDRED TWENTY-NINE THOUSAND (129,000) POUNDS VEHICLE COMBINATIONS.

All vehicle combinations shall be subject to the following conditions, limitations, and requirements: (7-1-13)

01. Cargo Carrying Units. Vehicle combinations operating with an overall length in excess of the limits imposed in Section 49-1010, Idaho Code, shall consist of not more than four (4) units, shall not exceed one hundred fifteen (115) feet overall and no such vehicle combination shall include more than three (3) cargo units except that a full truck and full trailer may have an overall length in excess of seventy-five (75) feet but not in excess of eighty-five (85) feet including load overhang. (7-1-13)

02. Power Unit. The power unit of all vehicle combinations shall have adequate power and traction to maintain a minimum of twenty (20) miles per hour under normal operating conditions on any up-grade over which the combination is operated. (7-1-13)

03. Connecting Devices. Fifth wheel, drawbar, and other coupling devices shall be as specified by Federal Motor Carrier Safety Regulations, Part 393. (4-7-11)

04. Hazardous Travel Conditions Restrictions. Extreme caution in the operation of permitted vehicle combinations shall be exercised when hazardous conditions exist. The movement of overlegal vehicles and/or loads by overlegal permit shall be prohibited and otherwise valid permits shall automatically become invalid en route when

travel conditions become hazardous. Hazardous conditions include, but are not limited to, ice, snow or frost; or when visibility is restricted to less than five hundred (500) feet. (7-1-13)

05. Trailer Weight Sequence. In any extra-length combination, the respective loading of any trailer shall not be substantially greater than the weight of any trailer located ahead of it in the vehicle combination. (Substantially greater shall be defined as more than four thousand (4,000) pounds heavier.) (10-2-89)

06. Operating Restrictions. Operators of all vehicle combinations governed by this rule shall comply with the following operating restrictions: (8-25-94)

a. A minimum distance of five hundred (500) feet shall be maintained between combinations of vehicles except when overtaking and passing. (10-2-89)

b. Except when passing another vehicle traveling in the same direction, the combination shall be driven so as to remain at all times on the right hand side of the centerline of a two (2) lane, two (2) way highway, or on the right hand side of a lane stripe or marker of a highway of four (4) or more lanes. (1-1-90)

c. Be in compliance with all Federal Motor Carrier Safety Regulations. (3-22-00)

07. Insurance Requirements. Every vehicle combination operated under this rule shall be covered by insurance of not less than five hundred thousand dollars (\$500,000) combined single limit. The permittee or driver of the permitted vehicle combination shall carry in the vehicle evidence of insurance written by an authorized insurer to certify that insurance in this minimum amount is currently in force. (7-1-13)

08. Tire Limitations. Single axles on vehicle combinations shall be equipped with four (4) tires except on the steering axle, or variable load suspension axles (VLS-lift axles), unless equipped with fifteen (15) inch wide or wider single tires. Multiple axle configurations may be equipped with single tires on each of the axles as long as the pounds-per-inch width of tire does not exceed six hundred (600) pounds, the manufacturers rating or legal weights whichever is less. Load for inch width of tire for the front steer axle may not exceed the manufacturer's load rating per tire or the load rating of the axle or twenty thousand (20,000) pounds per axle whichever is less. (3-25-16)

09. Brakes. Brakes shall meet the Federal Motor Carrier Safety Regulations and shall be maintained to the Federal Motor Vehicle Safety Standards No. 121 in effect at the time the commercial motor vehicle was manufactured. No vehicle or vehicle combinations shall operate with mixed brake systems between tractor and trailers. (~~7-1-13~~)()

10. Drivers. All drivers shall meet the special training requirements for Longer Combination Vehicles as outlined in 49 CFR Part 380. ()

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
39.03.23 - RULES GOVERNING REVOCATION OF OVERLEGAL PERMITS
DOCKET NO. 39-0323-1601
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This action is authorized pursuant to Section 40-312, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The modification to this rule addresses a new instance in which a permit can be revoked. Specifically, revocation of a permit for non-compliance if the motor carrier has violated an Out-of-Service order by the Federal Motor Carrier Safety Administration (FMCSA) as described in 49 CFR Part 386 (386.73) of the Federal Motor Carrier Safety Regulations.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 2016 Idaho Administrative Bulletin, [volume 16-5, pages 68-69](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule. This rule change does reference 49 CFR 386.73 which deals with a FMCSA out-of-service order. This order may be issued to prohibit a motor carrier from conducting operations subject to FMCSA jurisdiction if it is determined that said motor carrier attempted to operate under a new identity or as an affiliated entity to: (1) Avoid complying with an FMCSA order; (2) Avoid complying with a statutory or regulatory requirement; (3) Avoid paying a civil penalty; (4) Avoid responding to an enforcement action; or (5) Avoid being linked with a negative compliance history.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, please contact Reymundo Rodriguez, Motor Carrier Manager, at (208) 334-8699.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 2nd Day of August, 2016

Ramón S. Hobdey-Sánchez
Governmental Affairs Program Specialist
Idaho Transportation Department
3311 W. State Street
PO Box 7129
Boise ID 83707-1129
Phone: (208) 334-8810
ramon.hobdey-sanchez@itd.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0323-1601
(Only Those Sections With Amendments Are Shown.)

100. REVOCATION OF PERMIT FOR NON-COMPLIANCE WITH THE LIMITATIONS OR PROVISIONS OF THE PERMIT.

01. Disqualification of Permits. The permit shall become invalid and the cited vehicle may be disqualified for reissuance of permits if convicted of the following: (3-20-14)

a. The vehicle combination does not satisfy the requirements of Federal Motor Carrier Safety Regulations Part 393. (3-20-14)

b. The vehicle combination violates permitting conditions (other than weight) for the following: (3-20-14)

i. Failure to travel on Extra Length or Up to 129,000 Pound designated routes. (3-20-14)

ii. Failure to properly display required flags and/or signs. (3-20-14)

iii. Failure to provide required number of pilot cars and/or proper placement. (3-20-14)

iv. Failure to provide required lighting for travel during hours of darkness. (3-20-14)

v. Failure to travel during the hours of operation as specified on the permit. (3-20-14)

vi. Failure to comply with wind velocity requirements when moving manufactured housing, office trailers and modular buildings. (3-20-14)

vii. Failure to comply when travel conditions become hazardous. Hazardous conditions include, but are not limited to, ice, snow or frost; or when visibility is restricted to less than five hundred (500) feet. (3-20-14)

c. The vehicle combination violates weight limits under Section 49-1001 (1)(2) & (9), Idaho Code. (3-20-14)

i. Violating weight limits for single, tandem, tridem, quad, or other type axle groups by more than fifteen percent (15%). (3-20-14)

ii. Violating gross or bridge weight allowances by more than seven percent (7%). (3-20-14)

d. The motor carrier has violated an Out-of-Service order by the Federal Motor Carrier Safety Administration as described in Part 386 (386.73) of the Federal Motor Carrier Safety Regulations. ()

02. Permit Revocation Process. A copy of the judgment of conviction from the court and the overlegal permit authorizing operation must be provided to the Permit Office by enforcement personnel. Paperwork will be reviewed for compliance with the provisions of this rule and, if met, notification will be sent to the company informing them of the pending revocation that will occur within ten (10) days of the letter being issued. (3-20-14)

03. Disqualification Periods. When a permit has become invalid, the vehicle identified on the invalidated permit may be disqualified for reapplication for permit for a period of thirty (30) days after the first violation, for a period of six (6) months after the second violation, and for a period of one (1) year after the third violation. (3-20-14)

04. Penalties. In addition to revocation of permits as authorized in this rule, the permittee shall be subject to all applicable penalties provided by law with regard to the provisions violated. (8-25-94)

IDAPA 46 - BOARD OF VETERINARY MEDICINE

46.01.01 - RULES OF THE STATE OF IDAHO BOARD OF VETERINARY MEDICINE

DOCKET NO. 46-0101-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-2105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking is needed to: (1) implement a provision of Idaho Code; (2) provide clarity to continuing education requirements for certified veterinary technicians; and (3) eliminate an unnecessary requirement in existing rule regarding membership on the Committee on Humane Euthanasia. Currently, Board rules do not comply with a statute that states that Board of Veterinary Medicine rules must address when and where Board meetings are held. This rulemaking corrects this deficiency. The rulemaking also seeks to update and clarify provisions regarding continuing education requirements for certified veterinary technicians to be more consistent with comparable provisions for veterinarians. Finally, an existing rule requires that a member of the Board sit on the Committee on Humane Euthanasia. It is widely recognized that this provision is unnecessary and the rulemaking will remove this requirement.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016 Idaho Administrative Bulletin, [Vol. 16-6, pages 55-56](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jodie Ellis, Executive Director, at (208) 332-8588 or at jodie.ellis@agri.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 5th Day of August, 2016

Jodie Ellis
Executive Director
Board of Veterinary Medicine
2270 Old Penitentiary Rd.
P. O. Box 7249
Boise, ID 83707
Phone: (208) 332-8588 / Fax: (208) 332-8645

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 46-0101-1601
(Only Those Sections With Amendments Are Shown.)

004. GENERAL PROVISIONS.

01. Office. (7-1-97)

a. The office of the Board is located at 2230 Old Penitentiary Road, Boise, Idaho 83712. (7-1-97)

b. The office mailing address is P.O. Box 7249, Boise, Idaho 83707. (7-1-97)

c. The office telephone number is (208) 332-8588. (7-1-97)

d. The Board's facsimile (FAX) number is (208) 332-8645. (4-7-11)

e. The Board's e-mail address is bovminfo@agri.idaho.gov. (4-4-13)

f. The Board's website address is <http://www.bovm.idaho.gov>. (4-4-13)

g. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (7-1-97)

02. Communications. All written communications and documents concerning any matter covered by these rules should be addressed to the office of the Board, and not to individual members of the Board or the Board's staff. All communications and documents are deemed to be officially received only when delivered to the Board office during office hours. (7-1-97)

03. Filing of Documents. All written communications and documents that are intended to be part of an official record for decision in a rulemaking or contested case must be filed with the executive director of the Board. Filing can be accomplished by personal delivery, mail, facsimile transmission (FAX), or electronic mail (e-mail). FAX and e-mail filings submitted after Board office hours will be deemed filed as of the next business day the Board office is open. (4-4-13)

a. In a rulemaking submission, the original and one (1) copy of all documents must be filed with the Board. (4-4-13)

b. In a contested case proceeding, filing is sufficient if one (1) original is delivered to the executive director, one (1) copy for the Board, one (1) copy for the hearing officer, and one (1) copy submitted to the opposing party, as applicable. Whenever documents are filed by FAX or e-mail, originals and copies required under this rule shall be deposited in the mail the same day or hand delivered the following business day to the executive director, the Board, the hearing officer, and opposing parties, as applicable. (4-4-13)

04. Board Meetings. The Board will meet each year in the months of January and June, and at such other times as requested by the Board or Board president. Unless otherwise stated in the meeting notices, all meetings will be held in Boise, Idaho. ()

(BREAK IN CONTINUITY OF SECTIONS)

102. MANDATORY CONTINUING EDUCATION FOR CERTIFIED VETERINARY TECHNICIANS
MANDATORY CONTINUING EDUCATION.

01. Statement of Purpose. ~~In order to best serve the citizens of Idaho and their animals, each~~ It is of primary importance to the public that certified veterinary technicians ~~shall be required to complete a minimum of fourteen (14) hours of ongoing continuing education in the field of~~ continue their veterinary technology ~~in each and every two (2)-year~~ education throughout the period ~~following the date of his certification. A maximum of four (4) credit hours~~ of their active practice of veterinary technology. These rules establish the minimum continuing veterinary technology education ~~in management may be used toward the fulfillment of the CE requirements necessary for certified veterinary technicians to maintain a license to engage in the practice of veterinary technology in the state of Idaho.~~ ()

02. Approved Courses. ~~attendance period, content of report, exemptions, and credit for attendance are the same as outlined in Section 015 of these rules, mandatory continuing veterinary education with the exception of Subparagraph 015.03.d.i.(5) of these rules, which shall be the veterinary technician's signature, under penalty of perjury, and Subparagraph 015.03.b.iii. of these rules, which shall be~~

a. Approved courses include: ()

i. Those courses and providers listed on the American Association of Veterinary State Board's Continuing Education Registry; and ()

ii. Those courses and providers approved by the Board. ()

b. Board approval for a continuing education course may be obtained by sending a written request to the Board office and enclosing copies of the course agenda, dates, times, locations, and requested number of credit hours in management and veterinary technology. Copies of the sign-in and sign-out sheets for each approved course are to be supplied to the Board office following completion of the course by the course provider. ()

03. Education Requirements. ()

a. Minimum Requirement. Each active certified veterinary technician in the state of Idaho shall complete a minimum of fourteen (14) credit hours of accredited continuing veterinary technology education activity in each and every two (2)-year period following the date of his admission to the practice of veterinary technology in this state. ()

b. Credit Requirements. The following are minimum and maximum credits that may be earned for each reporting period and the number of credits that may be obtained by participating in on-line or correspondence courses. ()

i. A minimum of ten (10) hours of continuing education in veterinary technology. ()

ii. A maximum of four (4) hours of continuing education in management. ()

iii. Certified veterinary technicians may obtain a maximum of ten (10) credit hours ~~credit for~~ through approved on-line or correspondence courses. ~~No credit for attending approved courses in the field of veterinary technology shall be applicable to any reporting period other than that during which the credit is actually earned.~~ (3-20-14)()

c. Attendance Period. The attendance period shall be based upon the fiscal year (July 1 through June 30). ()

d. Report. Each certified veterinary technician subject to these rules shall file a written report with the Board executive director on a form prescribed by the Board, as provided in this rule. ()

i. Contents of report. The report shall set forth the record of the certified veterinary technician's compliance with these rules during the two (2)-year attendance period and shall contain at least: ()

(1) A list of the approved courses attended or taken; ()

- (2) The dates of attendance or completion of the courses; ()
- (3) The sponsoring organization; ()
- (4) The hours attended or completed for each course, rounded to the nearest one-half (1/2) of an hour; ()
- (5) Any other information requested by the Board; and ()
- (6) The technician's signature, under penalty of perjury. ()
- ii. Time of filing. The report shall be submitted or postmarked no later than June 30 in the year the certified veterinary technician is required to complete the continuing education requirement. ()
- iii. Retention of original documentation. The supporting documentation for compliance with continuing education requirements shall not be submitted with the report. Rather, the certified veterinary technician shall retain original documentation of attendance or completion of fourteen (14) credit hours or approved courses at least until December 31 following the two-year renewal period covered by the course. ()
- e. Auditing. Each year the Board will conduct an audit of renewals. ()
- i. The percentage of renewals audited in any given year will be determined by the Board in its sound discretion. ()
- ii. Within thirty (30) days of notification of an audit, a certified veterinary technician shall provide to the Board all documentation supporting completion of the courses reported. ()
- 04. Exemptions.** Upon a showing of good cause by a certificant to the Board, the Board may exempt such person from any, all or part of the continuing education requirement or may grant an extension of the required period. Written requests for exemptions from continuing education credits shall be sent to the Board office. ()
- 05. Credit for Attendance.** Continuing veterinary technology education credits may be earned by attending or presenting approved continuing veterinary technology education. ()
- a. Credits. One (1) credit hour shall be given for each fifty (50) minutes actually spent by the active member in attendance at an accredited, domestic or foreign, course. No credit shall be given for: ()
- i. Time spent in introductory remarks, coffee and lunch breaks, business meetings or other activities not involving the educational aspects of the courses; ()
- ii. Any course attended before admission to practice veterinary technology in Idaho; or ()
- iii. Journal and magazine articles, videos or correspondence courses, unless specially approved by the Board. ()
- b. In cases of solo presentation, the presenter of an approved course shall be entitled to claim one (1) credit hour for each fifty (50) minutes of actual course instruction. By way of limitation, in no case shall the presenter be allowed more than eight (8) credit hours for any particular course or substantially related topic during the applicable two (2)-year reporting period, regardless of how many times the course is offered or given. ()
- c. In cases of panel presentations, the number of continuing credit hours each panel member is entitled to claim shall be calculated by multiplying the actual number of course hours by two (2) and dividing that number by the number of panel members involved. ()
- d. Carryover Credit. No credit for attending approved courses in continuing veterinary technology education shall be applicable to any reporting period other than that during which the credit is actually earned. ()

(BREAK IN CONTINUITY OF SECTIONS)

200. COMMITTEE ON HUMANE EUTHANASIA.

Pursuant to Section 54-2105(8), Idaho Code, a Committee on Humane Euthanasia (COHE) is established for the purpose of training, examining, and certifying euthanasia agencies and euthanasia technicians. The COHE shall consist of no fewer than five (5) members appointed by the Board. At its discretion, the Board may appoint itself as the COHE. ~~The membership of the COHE shall always include at least one (1) member of the Board.~~ New members shall be nominated by either the Board or the COHE and be confirmed by the Board. Applicants for a COHE position shall be certified euthanasia technicians (CETs) as defined by Section 54-2103(9), Idaho Code, and employed by a certified euthanasia agency as defined by Section 54-2103(8), Idaho Code, or be an Idaho licensed veterinarian.

~~(4-2-08)~~ ()

01. Term. Each member shall serve for three (3) years, at the pleasure of the Board. A COHE member may be eligible for reappointment. If there is a vacancy for any cause, the COHE or the Board shall nominate and the Board shall confirm a successor to fill the unexpired term. (4-7-11)

02. Duties. The duties of COHE members shall include, but not be limited to, the following: (7-1-93)

a. Coordinate and provide euthanasia training classes as needed. (7-1-97)

b. Inspect and certify agencies. (3-30-01)

c. Review the applications, records, performance, methods and procedures used by agencies and persons seeking to be certified or to renew their certification as a Certified Euthanasia Agency (CEA) or Certified Euthanasia Technician (CET). (3-30-01)

d. Conduct written and practical examinations for applicants applying for certification and authorize certification through the Board. (3-30-01)

e. Recommend suspension or revocation of a certification when necessary. (3-30-01)

03. Compensation. Members of the COHE shall be compensated as provided by Section 59-509(n), Idaho Code. (7-1-97)

IDAPA 46 - BOARD OF VETERINARY MEDICINE

46.01.01 - RULES OF THE STATE OF IDAHO BOARD OF VETERINARY MEDICINE

DOCKET NO. 46-0101-1603 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2016.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking is required to implement a provision of Idaho Code. The rulemaking establishes a procedure for a certified veterinary technician to go on inactive certification status and back to active status, as well as setting an appropriate renewal fee and a fee to cover Board administrative costs.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Idaho statute authorizes certified veterinary technicians to place their certifications on "inactive" status, remain in that status, and return to "active" status if they comply with procedural and fee rules of the Board. Technicians have expressed a desire to avail themselves of this statutory benefit but have been prevented from doing so because there is no procedure or fees currently in place. This rulemaking rectifies this problem.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

The rulemaking will impose a \$25 fee for a certified veterinary technician to remain on inactive status, and a \$50 fee to convert from inactive to active status. The \$25 renewal fee for an inactive certification is a reduction from the \$75 fee for active status. The \$50 reactivation fee is new. These fees are imposed pursuant to Sections 54-2105 and 54-2112, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

The Board is a dedicated fund agency; there will be no impact on the state general fund. Any minimal reduction in renewal fees will likely be offset by those CVTs that go on inactive status versus not renewing their licenses. Therefore, the Board estimates that there will likely be no fiscal impact on the Board's dedicated fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because temporary rulemaking is necessary.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jodie Ellis, Executive Director, at (208) 332-8588 or at jodie.ellis@agri.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 5th Day of August, 2016

Jodie Ellis, Executive Director
Board of Veterinary Medicine
2270 Old Penitentiary Rd.
P. O. Box 7249
Boise, ID 83707
Phone: (208) 332-8588 / Fax: (208) 332-8645

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 46-0101-1603 (FEE RULE)
(Only Those Sections With Amendments Are Shown.)**

014. FEES.

Fees are established as authorized under Title 54, Chapter 21, Idaho Code, by action of the Board as follows:

- (7-1-97)

01. Veterinarian: (3-18-99)

 - a.** Application and Original License Fee (Section 54-2107, Idaho Code) - Two hundred seventy-five dollars (\$275). (3-21-12)
 - b.** Annual Renewal Fee (Section 54-2112, Idaho Code). (3-18-99)

 - i. Active License -- One hundred seventy-five dollars (\$175); (3-21-12)
 - ii. Inactive License -- Fifty dollars (\$50). (3-18-99)
 - c.** License Without Clinical Competency Test Fee (Section 54-2110, Idaho Code): (3-30-01)

 - i. Application and Original License Fee -- Two hundred seventy-five dollars (\$275); (3-21-12)
 - ii. Annual Renewal Fee: (3-30-01)

 - (1) Active License -- One hundred seventy-five dollars (\$175); (3-21-12)
 - (2) Inactive License -- Fifty dollars (\$50). (3-30-01)
 - d.** Reinstatement/Late Fee (Section 54-2112, Idaho Code) -- Two hundred dollars (\$200). (3-21-12)
 - e.** Reactivation Fee (restore inactive license to active status) – One hundred fifty dollars (\$150); (3-21-12)
 - f.** Temporary Permit Fee (Section 54-2111, Idaho Code) -- One hundred fifty dollars (\$150). (3-21-12)
 - g.** License Verifications (Sections 54-2105(6) and 54-2112, Idaho Code) -- Twenty dollars (\$20).

- (3-21-12)
- 02. Veterinary Technician Certification Fee.** (Section 54-2105(6)(d), Idaho Code). (3-30-01)
- a.** Application and Original Certification Fee -- One hundred twenty-five dollars (\$125). (3-21-12)
- b.** Annual Renewal Fee ~~—Seventy-five dollars (\$75).~~ ~~(3-21-12)~~(7-1-16)T
- i.** Active Certificate – Seventy-five dollars (\$75); (7-1-16)T
- ii.** Inactive Certificate – Twenty-five dollars (\$25). (7-1-16)T
- c.** Reinstatement/Late Fee -- Fifty dollars (\$50). (3-21-12)
- d.** Reactivation Fee (restore inactive certificate to active status) – Fifty dollars (\$50). (7-1-16)T
- ~~**e.**~~ Temporary Permit Fee -- Fifty dollars (\$50). (3-18-99)
- 03. Certified Euthanasia Agency Certification Fee.** (Section 54-2105(6)(d), Idaho Code). (3-30-01)
- a.** Application and Original Certification Fee -- One hundred dollars (\$100). (3-30-01)
- b.** Annual Renewal Fee -- Two hundred dollars (\$200). (3-21-12)
- c.** Reinstatement/Late Fee -- Fifty dollars (\$50). (3-21-12)
- 04. Certified Euthanasia Technician Certification Fee.** (Section 54-2105(6)(d), Idaho Code). (3-30-01)
- a.** Training and Certification Fee -- One hundred dollars (\$100). (3-30-01)
- b.** Annual Renewal Fee -- One hundred dollars (\$100). (3-21-12)
- c.** Reinstatement/Late Fee -- Fifty dollars (\$50). (3-21-12)
- 05. Duplicate License and Certificate Fee -- Twenty-Five Dollars (\$25).** When a new license, wall certificate or certification is issued for the purpose of changing the license or certificate holder’s name, the request for name change must be accompanied by a copy of the court order or marriage license authorizing the name change and the current license, certification or original wall certificate shall be returned to the Board office. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

104. ~~EXPIRATION OF~~ VETERINARY TECHNICIAN CERTIFICATION -- ~~NOTICE~~ RENEWAL.

~~**01. Term of Certification.** A certification to practice veterinary technology in the state of Idaho shall be valid for a period of one (1) year. (3-30-01)~~

021. Expiration and Renewal. Unless renewed on or before June 30, all certificates shall will expire annually on July 1; ~~but, An “active” or “inactive” veterinary technician certification~~ may be renewed by submission of the completed ~~and signed~~ annual renewal form prescribed by the Board, submission of a continuing education report as outlined in ~~Paragraph 015.03-d.~~ Section 102 of these rules for the appropriate hours of continuing education, ~~by meeting other requirements as defined in the rules adopted by the Board,~~ and payment of all applicable fees. ~~The form for renewal of a veterinary technician certificate shall include, but not be limited to:~~ ~~(3-30-01)~~(7-1-16)T

- ~~a.~~ *Name and social security number;* (3-30-01)
- ~~b.~~ *Current employment status;* (3-30-01)
- ~~c.~~ *Current employment address and phone number;* (3-30-01)
- ~~d.~~ *Current home address and phone number; and* (3-30-01)
- ~~e.~~ *Continuing education credits earned.* (3-30-01)

032. **Notice and Form for Renewal.** On or about May 1, the Board shall mail a notice to each certified veterinary technician ~~whose certification expires on July 1 of that year~~, and shall also provide a form for renewal. In the alternative, the Board may provide the notice and renewal form electronically or make them accessible to technicians from the Board's website. The Board shall issue a new certificate to all qualified veterinary technicians certified under Title 54, Chapter 21, Idaho Code. (3-30-01)(7-1-16)T

04. **Return to "Active" Certification Status.** A technician may place a certification on "inactive" status by complying with the applicable provisions of Section 54-2112, Idaho Code. A technician whose certification is on inactive status shall not practice veterinary technology or technician duties in this state. A technician may convert from "inactive" status to "active" status by: (7-1-16)T

- a. Submitting to the Board office a completed application form approved by the Board; (7-1-16)T
- b. Providing evidence satisfactory to the Board of completion of required continuing education credits; (7-1-16)T
- c. Providing any additional evidence deemed necessary by the Board to demonstrate the technician's continued competency in veterinary technology; and (7-1-16)T
- d. Paying all applicable fees. (7-1-16)T

045. **Expired Certification Fees.** Within thirty (30) days ~~of the date~~ after a certification expires due to nonrenewal, the certification may be reinstated by paying the established late fee, the renewal fee, and by fulfilling any other requirements of Section 104 of these rules and Section 54-2112, Idaho Code. Once a certification has expired, a veterinary technician may not perform technician duties until the certification has been reinstated or until the technician has applied for and received a new certification. (3-30-01)(7-1-16)T

056. **Failure to Renew or Reinstate Certification.** Any person who shall practice as a veterinary technician after the expiration of a certification and who fails to renew or reinstate the certification shall be practicing in violation of Title 54, Chapter 21, Idaho Code. (3-30-01)

067. **Change of Address.** It is the responsibility of each certified veterinary technician to notify the Board office of any change of address. Failure to receive a renewal form from the Board shall not constitute an excuse for failure to pay the renewal fee and completion of the prescribed form. (3-30-01)

IDAPA 48 - IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION

48.01.01 - RULES OF THE IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION

DOCKET NO. 48-0101-1601

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2016.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 54-3605(15) and 54-3610, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The passage of House Bill 456 by the 2016 Idaho Legislature amended Section 54-3610, Idaho Code, and removed statutory assessment language that was inconsistent with and duplicative to the Idaho Grape Growers and Wine Producers Commission's administrative rules that were approved by the Idaho Legislature in 2010 with respect to grapes and grape juice purchased from out-of-state producers for the production of wine in Idaho. Omission of this duplicative language was inadvertently overlooked by industry until prior to the 2016 legislative session. By statute, the Commission is charged with setting forth the assessment calculations in rule for Idaho's grape and wine industry. In reviewing the current assessment structure for grapes and grape juice, Idaho wineries have brought forth the request to simplify the assessment structure for future assessment cycles.

The current assessment structure has proven confusing for industry members and requires them to convert wine grapes purchased in tons into gallons produced before applying assessment payments. In turn, the Commission has to reconvert gallons to tons in order to determine total tons harvested in Idaho for that year. The temporary and proposed rule streamlines the assessment process by requiring both wineries and vineyards to pay assessments based on tons rather than any conversion to gallons, as well as removes the need for the Commission to convert gallons to tons for proper harvest numbers.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The changes to Idaho Code section 54-3610 are effective as of July 1, 2016. The assessment cycle is from July 1 to June 30 of each year. A temporary rule is necessary to have the assessment calculation methodology in place for the assessment cycle.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

No change to the assessment rate is proposed and the Commission will not experience a fiscal impact. The rule may allow wineries to reduce the time involved in submitting assessments, reducing costs to the wineries.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 1, 2016 Idaho Administrative Bulletin, [Vol. 16-6, pages 59-60](#), and in the July 6, 2016 Idaho Administrative Bulletin, [Vol. 16-7, pages 87-88](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Moya Dolsby, Executive Director, at (208) 332-1538.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 28, 2016.

DATED this 25th Day of July, 2016.

Moya Dolsby
Executive Director
Grape Growers and Wine Producers Commission
821 W. State St.
Boise, ID 83702
Phone: (208) 332-1538
Fax: (208) 334-2505

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 48-0101-1601
(Only Those Sections With Amendments Are Shown.)**

020. TAX AND LATE PAYMENT PENALTY.

01. Levy and Rate of Tax. In accordance with Section 54-3610, Idaho Code, a tax is levied and imposed on wineries, and grapes grown, used, ~~grown~~, or purchased, and grape juice purchased for the production of wine in Idaho. The rate of each tax shall be: ~~(3-19-07)~~(7-1-16)T

a. ~~Four cents (\$.04)~~ Seven dollars (\$7) per gallon ton of ~~wine produced~~ grapes purchased by producers in Idaho during the previous calendar year for the production of wine in Idaho. ~~(3-29-10)~~(7-1-16)T

b. Seven dollars (\$7) per ton of grapes harvested by growers in Idaho during the previous calendar year for the purpose of ~~winification during the previous calendar year~~ production of wine in Idaho. ~~(3-29-10)~~(7-1-16)T

c. Seven dollars (\$7) per ton for of grapes purchased ~~from~~ by producers outside Idaho during the previous calendar year for the purpose of the production of wine in Idaho ~~during the previous calendar year.~~ ~~(3-29-10)~~(7-1-16)T

d. ~~Six dollars and sixty-eight~~ Four cents (\$6.6804) per ~~one hundred sixty-seven (167)~~ gallons, ~~or any portion thereof,~~ of grape juice purchased ~~from~~ by producers outside Idaho during the previous calendar year for the purpose of the production of wine in Idaho ~~during the previous calendar year.~~ ~~(3-29-10)~~(7-1-16)T

~~e. The tax rates set forth in Paragraphs 020.01.a. through 020.01.d., shall be phased in over a three-year (3) period as follows: (3-29-10)~~

~~i. Thirty-three percent (33%) in fiscal year 2010; (3-29-10)~~

- ~~ii. Sixty-six percent (66%) in fiscal year 2011; and (3-29-10)~~
- ~~iii. One hundred percent (100%) in fiscal year 2012 and all subsequent years, except that the maximum tax levied upon any winery for fiscal year 2010 shall be one thousand dollars (\$1,000). (3-29-10)~~

02. Minimum Levy. The minimum taxes paid by any grower or winery shall be one hundred dollars (\$100) annually. (3-29-10)

03. Payment of Tax. The grower harvesting grapes for the production of wine shall pay the tax levied upon the grower. Each winery shall pay the tax levied upon the winery for the production of wine. Purchasers of grapes grown or grape juice produced outside Idaho shall pay taxes levied on such grapes and grape juice. Purchasers of grape juice produced in Idaho shall pay taxes levied on such grape juice. All taxes shall be paid on or before June 30 of each year. ~~(3-29-10)~~(7-1-16)T

04. Late Payment Penalty. Persons making payment of the levied tax after the date set forth in this chapter shall be subject to a late payment penalty of fifteen percent (15%) per annum on the amount due. In addition to the late payment penalty, the Commission shall be entitled to recover all costs, fees, and reasonable attorney's fees incurred in the collection of the tax and penalty provided for in Section 020 of these rules. (3-19-07)

05. Opt Out Alternative. A grower or producer may opt out of the levy of tax by submitting a letter to the Commission no later than June 30 of each year stating intent to opt out of the application of the provisions of Title 54, Chapter 36, Idaho Code, for the upcoming fiscal year. The letter shall include the grower or producer's name and address. (3-19-07)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-1601

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Sections 39-105, 39-107, and 39-114, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this proposed rulemaking will be held as follows:

Tuesday, October 11, 2016 - 3:00 pm

**Department of Environmental Quality
Conference Room A
1410 N. Hilton
Boise, Idaho**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: The Crop Residue Burning (CRB) Program has been implemented by DEQ since 2008. One aspect of the program requires that, prior to approving a crop residue burn, DEQ must determine that 1) air quality is not exceeding 75% of any National Ambient Air Quality Standard (NAAQS), and 2) air quality is not projected to exceed such level during the next 24 hours. Fine particulate matter (PM_{2.5}) is the pollutant most directly affected by crop residue burning. There are days when PM_{2.5} concentrations are not a concern, but ozone concentrations exceed or are projected to exceed 75% of the ozone NAAQS.

In 2015, the U.S. Environmental Protection Agency (EPA) reduced the ozone NAAQS from 75 ppb to 70 ppb. The ozone NAAQS reduction is included in DEQ's incorporation by reference rule docket 58-0101-1603. As a result of the ozone NAAQS reduction, there would be fewer days when DEQ could approve crop residue burns despite the fact that 1) the weather conditions exhibit good smoke dispersion characteristics, and 2) DEQ technical staff expect the burns to have minimal impact on ambient ozone concentrations (NAAQS). Therefore, burning may not be allowed on good burn days even when the burn is not predicted to cause or significantly contribute to a violation of the ozone NAAQS.

Through the negotiated rulemaking process, DEQ developed a proposed rule that gives DEQ the authority to allow crop residue burning when ozone levels are not exceeding, or expected to exceed, 90% rather than 75% of the ozone NAAQS. This new 90% level is still protective of the ozone NAAQS, and also provides farmers the ability to burn while following smoke management best practices. This rule will be promulgated under Docket No. 58-0101-1601 and is published with this notice. As an outgrowth of the negotiations, DEQ also developed an interim rule that allows the CRB Program to continue operating under the 2008 ozone NAAQS until EPA approves the new 90% ozone level in a revised State Implementation Plan (SIP). This rule will be promulgated separately under Docket No. 58-0101-1604.

Before the Board of Environmental Quality (Board) can adopt the rule, it is necessary to revise Idaho Code § 39-114 for consistency with the revisions in this proposed rule docket. DEQ intends to submit draft proposed legislation to the 2017 Legislature. If the legislation is passed by the Legislature and approved by the Governor, it will become effective immediately. DEQ will then present the final rule proposal to the Board for adoption.

Interim Rule Proposed Under Rule Docket 58-0101-1604:

The proposed revisions in rule docket 58-0101-1604 allow that, for purposes of the ozone NAAQS, the 2008 NAAQS shall apply. The adoption of this proposed rule would maintain the status quo for the 2017 burn season, allowing the CRB Program to utilize the 2008 ozone NAAQS until EPA approves the SIP revision for rule docket 58-0101-1601. It is anticipated that EPA will approve the SIP revision by February 28, 2018. Without using the 2008 ozone NAAQS, the reduction in burn days could cause considerable economic hardship to grass seed growers for no environmental or

public health benefit.

90% Ozone NAAQS Proposed Under Rule Docket 58-0101-1601:

The proposed revision in rule docket 58-0101-1601 changes the percent of the ozone NAAQS, upon which no crop residue burning is allowed, from 75% to 90%. If the rule is adopted by the Board, DEQ will prepare a technical document demonstrating that the change from 75% to 90% will not cause or significantly contribute to a violation of the ozone NAAQS. DEQ will then submit the rule and technical document to EPA as a SIP revision under Section 110 of the Clean Air Act. Contingent upon EPA SIP approval, Subsection 621.01 adopted under rule docket 58-0101-1601 would take effect on February 28, 2018 replacing Subsection 621.01 adopted under rule docket 58-0101-1604. Consequently, state law and Idaho's federally approved SIP will mirror each other at that time.

Farmers desiring to burn crop residue, members of the regulated community who may be subject to Idaho's air quality rules, special interest groups, Idaho State Department of Agriculture, tribes, public officials, and members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, and after passage of companion legislation revising Idaho Code § 39-114, DEQ intends to present the final rule proposal to the Board for adoption of a temporary/pending rule. If adopted by the Board, temporary rule docket 58-0101-1604 will become effective immediately and temporary rule docket 58-0101-1601 will become effective February 28, 2018. The rules will then be submitted to the 2018 Legislature for review and approval. Pursuant to Idaho Code § 67-5226(1)(c), the Governor has found that adoption of a temporary rule is appropriate as it will provide greater flexibility to farmers using the tool of crop residue burning while still following good smoke management best practices.

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220 and IDAPA 58.01.23.810-815. The Notice of Negotiated Rulemaking was published in the May 2016 issue of the Idaho Administrative Bulletin, and a preliminary draft rule was made available for public review. Meetings were held on May 18, June 23, July 20, and July 27, 2016. Members of the public participated in the negotiated rulemaking process by attending the meetings and by submitting written comments. The negotiated rulemaking record, which includes the negotiated rule drafts, written public comments, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0101-1601.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding development of the rule. At the conclusion of the negotiated rulemaking process, DEQ formatted the final draft (Draft No. 4) for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it more stringent than federal regulations.

In January 2007, the Ninth Circuit Court of Appeals held that Idaho's crop residue burning rules were illegal because there was not an adequate demonstration that the rules were compliant with the federal Clean Air Act. As a result, Governor Otter called for growers and activists to join with state regulators to negotiate a statute and implementing rules that would allow crop residue burning to resume under the Clean Air Act. The statute, Idaho Code § 39-114, and rules, IDAPA 58.01.01.618 through 624, together with an air quality demonstration that open burning when ambient air quality is at or below 75% of any NAAQS does not cause or significantly contribute to a violation of the NAAQS, were then submitted to EPA for approval as part of Idaho's SIP. EPA approved the SIP submittal as compliant with the Clean Air Act on August 1, 2008.

As noted, Idaho Code § 39-114 includes the requirement to review all NAAQS prior to approving a crop residue burn. Consequently, that is what is now required by state law and federal law in the federally approved SIP. The prohibition of crop residue burning if particulate matter is at, or expected to reach, 75% of the NAAQS mirrors EPA Region 10's Federal Air Rules for Reservations (FARR).

It is anticipated the 2017 Legislature will revise Idaho Code § 39-114 for consistency with the revisions in the proposed rule docket. Because the Interim Rule and 90% Ozone Rule require a review of all NAAQS prior to allowing a crop residue burn, while the FARR requires EPA and/or the Tribes to review the particulate matter NAAQS, one could argue the rules and statute are broader in scope than federal regulations. However, because the current specifically negotiated statute and rules are in the federally approved SIP, they are now considered federal law. The Interim Rule maintains the status quo while the 90% Ozone Rule will be submitted to EPA for approval as a SIP revision. To obtain EPA approval, DEQ will provide the best available peer reviewed science and supporting information to demonstrate that loosening the ozone burn approval criteria from 75% to 90% of the ozone NAAQS will not cause or significantly contribute to a violation of the ozone NAAQS.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not Applicable

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not Applicable

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Mary Anderson at mary.anderson@deq.idaho.gov or (208) 373-0202.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before October 11, 2016.

Dated this 7th Day of September, 2016

Paula J. Wilson, Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255
(208) 373-0418 / Fax No. (208) 373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0101-1601
(Only Those Sections With Amendments Are Shown.)

621. BURN DETERMINATION.

01. Burn Approval Criteria. The Department shall develop a Crop Residue Operating Guide to use in assisting in the determination of burn approvals. The permittee shall obtain initial approval from the Department for the proposed burn at least twelve (12) hours in advance of the burn. The permittee shall confirm, with the Department, the approval the morning of the proposed burn. The Department may shorten this time frame if meteorological or other applicable conditions change that will impact the air quality during the proposed burn period. To approve a permittee's request to burn, the Department must determine that ambient air quality levels do not exceed ninety percent (90%) of the ozone national ambient air quality standard (NAAQS) and seventy-five percent (75%) of the level of any ~~national ambient air quality standards~~ other NAAQS on any day and are not projected to exceed such level over the next twenty-four (24) hours, and ambient air quality levels have not reached, and are not forecasted to reach and persist at, eighty percent (80%) of the one (1) hour action criteria for particulate matter under Section 556 of these rules. In making this determination, the Department shall consider the following: ~~(5-8-09)~~ ()

- a.** Expected Emissions. Expected emissions from all burns proposed for the same dates; (5-8-09)

- b.** Proximity of Other Burns. The proximity of other burns and other potential emission sources within the area to be affected by the proposed burn; (5-8-09)
 - c.** Moisture Content. Moisture content of the material to be burned; (5-8-09)
 - d.** Acreage, Crop Type, and Fuel Characteristics. Acreage, crop type, and fuel characteristics to be burned; (5-8-09)
 - e.** Meteorological Conditions. Meteorological conditions; (5-8-09)
 - f.** Proximity to Institutions with Sensitive Populations. The proximity of the burn to institutions with sensitive populations, including public schools while in session; hospitals; residential health care facilities for children, the elderly or infirm; and other institutions with sensitive populations as approved by the Department. The Department shall not authorize a burn if conditions are such that institutions with sensitive populations will be adversely impacted or when the plume is predicted to impact such institutions; (5-8-09)
 - g.** Proximity to Public Roadways. Proximity to public roadways; (5-8-09)
 - h.** Proximity to Airports. Proximity to airports; and (5-8-09)
 - i.** Other Relevant Factors. Any other factors relevant to preventing exceedances of the air quality concentrations of Section 621. (5-8-09)
- 02. Notification of Approval.** If the Department approves the burn, then it will post on its website written notification of the approval and any specific conditions under which the burn is approved. Special conditions may include, but are not limited to: (5-8-09)
- a.** Conditions for burns near institutions with sensitive populations; (5-8-09)
 - b.** The requirement to withhold additional material such that the fire burns down if the Department determines pollutant concentrations reach the levels in Subsection 621.01 of this rule; (5-8-09)
 - c.** Conditions to ensure the burn does not create a hazard for travel on a public roadway; and (5-8-09)
 - d.** The requirement to consult with the Department to determine actions to be taken if conditions at the burn site fail to satisfy the conditions specified in the notice of approval to burn. (5-8-09)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 58-0101-1604

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. The action is authorized by Sections 39-105, 39-107, and 39-114, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this proposed rulemaking will be held as follows:

Tuesday, October 11, 2016 - 3:00 pm

**Department of Environmental Quality
Conference Room A
1410 N. Hilton
Boise, ID**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: The Crop Residue Burning (CRB) Program has been implemented by DEQ since 2008. One aspect of the program requires that, prior to approving a crop residue burn, DEQ must determine that 1) air quality is not exceeding 75% of any National Ambient Air Quality Standard (NAAQS), and 2) air quality is not projected to exceed such level during the next 24 hours. Fine particulate matter (PM_{2.5}) is the pollutant most directly affected by crop residue burning. There are days when PM_{2.5} concentrations are not a concern, but ozone concentrations exceed or are projected to exceed 75% of the ozone NAAQS.

In 2015, the U.S. Environmental Protection Agency (EPA) reduced the ozone NAAQS from 75 ppb to 70 ppb. The ozone NAAQS reduction is included in DEQ's incorporation by reference rule docket 58-0101-1603. As a result of the ozone NAAQS reduction, there would be fewer days when DEQ could approve crop residue burns despite the fact that 1) the weather conditions exhibit good smoke dispersion characteristics, and 2) DEQ technical staff expect the burns to have minimal impact on ambient ozone concentrations (NAAQS). Therefore, burning may not be allowed on good burn days even when the burn is not predicted to cause or significantly contribute to a violation of the ozone NAAQS.

Through the negotiated rulemaking process, DEQ developed a proposed rule that gives DEQ the authority to allow crop residue burning when ozone levels are not exceeding, or expected to exceed, 90% rather than 75% of the ozone NAAQS. This new 90% level is still protective of the ozone NAAQS, and also provides farmers the ability to burn while following smoke management best practices. This rule will be promulgated separately under Docket No. 58-0101-1601. As an outgrowth of the negotiations, DEQ also developed an interim rule that allows the CRB Program to continue operating under the 2008 ozone NAAQS until EPA approves the new 90% ozone level in a revised State Implementation Plan (SIP). This rule will be promulgated under Docket No. 58-0101-1604 and is published with this notice.

Before the Board of Environmental Quality (Board) can adopt the rule, it is necessary to revise Idaho Code § 39-114 for consistency with the revisions in this proposed rule docket. DEQ intends to submit draft proposed legislation to the 2017 Legislature. If the legislation is passed by the Legislature and approved by the Governor, it will become effective immediately. DEQ will then present the final rule proposal to the Board for adoption.

Interim Rule Proposed Under Rule Docket 58-0101-1604:

The proposed revisions in rule docket 58-0101-1604 allow that, for purposes of the ozone NAAQS, the 2008 NAAQS shall apply. The adoption of this proposed rule would maintain the status quo for the 2017 burn season, allowing the CRB Program to utilize the 2008 ozone NAAQS until EPA approves the SIP revision for rule docket 58-0101-1601. It is anticipated that EPA will approve the SIP revision by February 28, 2018. Without using the 2008 ozone NAAQS, the reduction in burn days could cause considerable economic hardship to grass seed growers for no environmental or

public health benefit.

90% Ozone NAAQS Proposed Under Rule Docket 58-0101-1601:

The proposed revision in rule docket 58-0101-1601 changes the percent of the ozone NAAQS, upon which no crop residue burning is allowed, from 75% to 90%. If the rule is adopted by the Board, DEQ will prepare a technical document demonstrating that the change from 75% to 90% will not cause or significantly contribute to a violation of the ozone NAAQS. DEQ will then submit the rule and technical document to EPA as a SIP revision under Section 110 of the Clean Air Act. Contingent upon EPA SIP approval, Subsection 621.01 adopted under rule docket 58-0101-1601 would take effect on February 28, 2018 replacing Subsection 621.01 adopted under rule docket 58-0101-1604. Consequently, state law and Idaho's federally approved SIP will mirror each other at that time.

Farmers desiring to burn crop residue, members of the regulated community who may be subject to Idaho's air quality rules, special interest groups, Idaho State Department of Agriculture, tribes, public officials, and members of the public who have an interest in the regulation of air emissions from sources in Idaho may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, and after passage of companion legislation revising Idaho Code § 39-114, DEQ intends to present the final rule proposal to the Board for adoption of a temporary/pending rule. If adopted by the Board, temporary rule docket 58-0101-1604 will become effective immediately and temporary rule docket 58-0101-1601 will become effective February 28, 2018. The rules will then be submitted to the 2018 Legislature for review and approval. Pursuant to Idaho Code § 67-5226(1)(c), the Governor has found that adoption of a temporary rule is appropriate as it will provide greater flexibility to farmers using the tool of crop residue burning while still following good smoke management best practices.

NEGOTIATED RULEMAKING: The text of the proposed rule was drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code § 67-5220 and IDAPA 58.01.23.810-815. This proposed rule is an outgrowth of the negotiated rulemaking conducted under Docket No. 58-0101-1601. The Notice of Negotiated Rulemaking for Docket No. 58-0101-1601 was published in the May 2016 issue of the Idaho Administrative Bulletin, and a preliminary draft rule was made available for public review. Meetings were held on May 18, June 23, July 20, and July 27, 2016. Members of the public participated in the negotiated rulemaking process by attending the meetings and by submitting written comments. The negotiated rulemaking record, which includes the negotiated rule drafts, written public comments, documents distributed during the negotiated rulemaking process, and the negotiated rulemaking summary, is available at www.deq.idaho.gov/58-0101-1601.

All comments received during the negotiated rulemaking process were considered by DEQ when making decisions regarding development of the rule. At the conclusion of the negotiated rulemaking process, DEQ formatted the final draft (Draft No. 4) for publication as a proposed rule. DEQ is now seeking public comment on the proposed rule.

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it more stringent than federal regulations.

In January 2007, the Ninth Circuit Court of Appeals held that Idaho's crop residue burning rules were illegal because there was not an adequate demonstration that the rules were compliant with the federal Clean Air Act. As a result, Governor Otter called for growers and activists to join with state regulators to negotiate a statute and implementing rules that would allow crop residue burning to resume under the Clean Air Act. The statute, Idaho Code § 39-114, and rules, IDAPA 58.01.01.618 through 624, together with an air quality demonstration that open burning when ambient air quality is at or below 75% of any NAAQS does not cause or significantly contribute to a violation of the NAAQS, were then submitted to EPA for approval as part of Idaho's SIP. EPA approved the SIP submittal as compliant with the Clean Air Act on August 1, 2008.

As noted, Idaho Code § 39-114 includes the requirement to review all NAAQS prior to approving a crop residue burn. Consequently, that is what is now required by state law and federal law in the federally approved SIP. The prohibition of crop residue burning if particulate matter is at, or expected to reach, 75% of the NAAQS mirrors EPA Region 10's Federal Air Rules for Reservations (FARR).

It is anticipated the 2017 Legislature will revise Idaho Code § 39-114 for consistency with the revisions in the proposed rule docket. Because the Interim Rule and 90% Ozone Rule require a review of all NAAQS prior to allowing a crop residue burn, while the FARR requires EPA and/or the Tribes to review the particulate matter NAAQS, one could argue the rules and statute are broader in scope than federal regulations. However, because the current specifically negotiated statute and rules are in the federally approved SIP, they are now considered federal law. The Interim Rule maintains the status quo while the 90% Ozone Rule will be submitted to EPA for approval as a SIP revision. To obtain EPA approval, DEQ will provide the best available peer reviewed science and supporting information to demonstrate that loosening the ozone burn approval criteria from 75% to 90% of the ozone NAAQS will not cause or significantly contribute to a violation of the ozone NAAQS.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: Not Applicable

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not Applicable

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Tiffany Floyd at tiffany.floyd@deq.idaho.gov or (208) 373-0440.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before October 11, 2016.

Dated this 7th Day of September, 2016

Paula J. Wilson, Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255
(208) 373-0418 / Fax No. (208) 373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 58-0101-1604
(Only Those Sections With Amendments Are Shown.)

621. BURN DETERMINATION.

01. Burn Approval Criteria. The Department shall develop a Crop Residue Operating Guide to use in assisting in the determination of burn approvals. The permittee shall obtain initial approval from the Department for the proposed burn at least twelve (12) hours in advance of the burn. The permittee shall confirm, with the Department, the approval the morning of the proposed burn. The Department may shorten this time frame if meteorological or other applicable conditions change that will impact the air quality during the proposed burn period. To approve a permittee's request to burn, the Department must determine that ambient air quality levels do not exceed seventy-five percent (75%) of the level of any national ambient air quality standards* (NAAQS) on any day (for purposes of the ozone NAAQS, the 2008 standard shall apply) and are not projected to exceed such level over the next twenty-four (24) hours, and ambient air quality levels have not reached, and are not forecasted to reach and persist at, eighty percent (80%) of the one (1) hour action criteria for particulate matter under Section 556 of these rules. In making this determination, the Department shall consider the following: ~~(5-8-09)~~ ()

- a. Expected Emissions. Expected emissions from all burns proposed for the same dates; (5-8-09)

- b.** Proximity of Other Burns. The proximity of other burns and other potential emission sources within the area to be affected by the proposed burn; (5-8-09)
 - c.** Moisture Content. Moisture content of the material to be burned; (5-8-09)
 - d.** Acreage, Crop Type, and Fuel Characteristics. Acreage, crop type, and fuel characteristics to be burned; (5-8-09)
 - e.** Meteorological Conditions. Meteorological conditions; (5-8-09)
 - f.** Proximity to Institutions with Sensitive Populations. The proximity of the burn to institutions with sensitive populations, including public schools while in session; hospitals; residential health care facilities for children, the elderly or infirm; and other institutions with sensitive populations as approved by the Department. The Department shall not authorize a burn if conditions are such that institutions with sensitive populations will be adversely impacted or when the plume is predicted to impact such institutions; (5-8-09)
 - g.** Proximity to Public Roadways. Proximity to public roadways; (5-8-09)
 - h.** Proximity to Airports. Proximity to airports; and (5-8-09)
 - i.** Other Relevant Factors. Any other factors relevant to preventing exceedances of the air quality concentrations of Section 621. (5-8-09)
- 02. Notification of Approval.** If the Department approves the burn, then it will post on its website written notification of the approval and any specific conditions under which the burn is approved. Special conditions may include, but are not limited to: (5-8-09)
- a.** Conditions for burns near institutions with sensitive populations; (5-8-09)
 - b.** The requirement to withhold additional material such that the fire burns down if the Department determines pollutant concentrations reach the levels in Subsection 621.01 of this rule; (5-8-09)
 - c.** Conditions to ensure the burn does not create a hazard for travel on a public roadway; and (5-8-09)
 - d.** The requirement to consult with the Department to determine actions to be taken if conditions at the burn site fail to satisfy the conditions specified in the notice of approval to burn. (5-8-09)

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LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the latest publication of the state Administrative Bulletin.

*The written comment submission deadline is September 28, 2016 unless otherwise noted.
Public hearing request deadline is September 21, 2016 unless otherwise noted.
(Temp & Prop) indicates the rule is both Temporary and Proposed.
(*PH) indicates that a public hearing has been scheduled.*

IDAPA 01 - IDAHO BOARD OF ACCOUNTANCY PO Box 83720, Boise, ID 83720-0002

01-0101-1601, Rules of the Board of Accountancy. Clarifies that licensees whose licenses lapse and whose license status is not moved to “inactive” or “retired” status may use the word “former” without violating state law.

IDAPA 02 – IDAHO DEPARTMENT OF AGRICULTURE PO Box 790, Boise, ID 83701

02-0622-1601, Noxious Weed Rules. Adds all plants and plant parts in the genera of: Cytisus, Genista, Spartium, and Chamaecytisus to Idaho’s Statewide Noxious Weed List; removes Cytisus scoparius from the “Control” noxious weed list; and defines “subtaxa.”

02-0631-1602, Noxious Weed Free Forage and Straw Certification Rules. Conforms the rule to latest revisions to the standards for Noxious Weed Free Storage and Straw products certification procedures used by the Department; adds new noxious weeds.

IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS PO Box 83720, Boise, ID 83720-0285

05-0103-1601, Rules of the Custody Review Board. Amends rule to provide clarity and corrects citations to Idaho Code.

IDAPA 07 – DIVISION OF BUILDING SAFETY 1090 E. Watertower St., Ste. 150, Meridian, ID 83542

07-0205-1601, Rules Governing the Idaho Public Safety Communications Commission. Allows a person to qualify for a journeyman plumber’s certificate by verifying 8 years’ plumbing experience in lieu of the current requirement of 4 years’ experience and 4 years of schooling.

07-0207-1601, Rules Governing Civil Penalties. Subjects a plumbing contractor to civil penalties for violations and noncompliance with permitting or inspection requirements, as well as licensure discipline.

IDAPA 09 – IDAHO DEPARTMENT OF LABOR 317 West Main Street, Boise, ID 83735

09-0130-1601, Unemployment Insurance Benefits Administration Rules. Removes references to outdated processes for handling claims and references to local offices; removes a provision that a claimant be coded as attached to their employer.

09-0207-1601, Unemployment Insurance Tax Administration Rules. Clarifies that payments by a partnership to its partner or by a sole proprietorship to its owner are excluded as wages for purposes of unemployment insurance tax.

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE
PO Box 83720, Boise, ID 83720-0036**

***16-0102-1601, Emergency Medical Services (EMS) - Rule Definitions.** (*PH) Updates definitions to align to current practices for the Recognition of Emergency Personnel Licensure Interstate Compact Act (REPLICA) in this chapter and in IDAPA 16.01.03 and 16.01.06.

16-0103-1601 - Emergency Medical Services (EMS) - Agency Licensing Requirements.

***16-0103-1601,** (*PH) Moves the requirements for data collection and submission by licensed EMS agencies to a new rule chapter that is being promulgated in this Bulletin under Docket No. 16-0106-1601.

***16-0103-1602,** (Temp & Prop) (*PH) Allows an EMS agency to operate seasonally and a hospital emergency department to obtain EMS agency licensure; seasonal duration for an EMS agency is being added; changes licensure requirements for EMS Air Medical Support; updates and incorporates by reference the “Minimum Equipment Standards for Licensed EMS Services.”

16-0106-1601, Emergency Medical Services (EMS) - Data Collection and Submission Requirements. New chapter provides for the collection and submission of data by licensed EMS agencies; incorporates by reference a standards manual that provides the data elements used for reporting.

***16-0107-1601, Emergency Medical Services (EMS) - Personnel Licensing Requirements.** (*PH) Allows EMS personnel from other states who have met the requirements under the interstate compact Act, REPLICA, to become licensed in Idaho.

***16-0219-1601, Food Safety and Sanitation Standards for Food Establishments (The Idaho Food Code).** (*PH) Adds “risk factor” and “good retail practices” to defined terminology used for retail food establishment inspections; updates the inspection process for scoring for food safety practices to reflect the new terminology.

***16-0319-1601, Rules Governing Certified Family Homes.** Aligns rules with governing statute to provide an exemption to certification for VA Medical Foster Homes; amends requirements for termination of the admission agreement.

***16-0506-1602, Criminal History and Background Checks.** (*PH) Amends disqualifying crimes list for unconditional denials to include crimes added to Idaho Code and crimes required for child protection by federal child protection programs and regulations; also aligns rule, which must be in effect by September 2017, to the Idaho Child Care Program's grant and federal regulation requirements for criminal history checks.

***16-0601-1601, Child and Family Services.** (*PH) Lowers the age for eligibility for foster youth to receive independent living services funded by the Chafee Program to 90 days after their 14th birthday.

***16-0612-1601, Rules Governing the Idaho Child Care Program.** (Temp & Prop) (*PH) Conforms rule to federal law that requires the state to comply by October 1, 2016 to the Re-Authorization of the Child Care and Development Block Grant Act; implements a 12-month eligibility redetermination period, adds to criminal history check requirements, addresses qualifying activities and job search availability, adds health and safety training requirements for child care providers, clarifies allowable child care costs, amend reporting requirements by providers and the Department; and provides for a gradual phase out of individuals receiving ICCP services whose incomes increase over the limits of the program.

**IDAPA 18 – DEPARTMENT OF INSURANCE
PO Box 83720, Boise, ID 83720-0043**

18-0110-1601, Producers Handling of Fiduciary Funds. Amends rule regarding bail to provide for deposit rules that treat cash collateral as fiduciary funds.

18-0150-1601, Adoption of the International Fire Code. Adopts and amends the 2015 International Fire Code that is incorporated by reference.

18-0154-1601, Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act. Requires all Medicare Supplement carriers to offer coverage to pre-65 Medicare eligible individuals; clarifies requirement to account for interest in projections; requires experience and rate increases to be pooled among all plans offered by a company; and clarifies when and what rating/underwriting factors can be used.

**IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY
PO Box 83720, Boise, ID 83720-0021**

19-0101-1601, Rules of the Idaho State Board of Dentistry. Adds standards for patient records; clarifies applicability of timeframe for acceptance of licensure examinations; clarifies active license renewal requirements; authorizes dental hygienists to administer nitrous oxide under general supervision; adds any prescription drug to unprofessional conduct rules for controlled substances; changes advertising rules; adds minimum infection control and sterilization requirements; eliminates continuing education documentation requirement; adds rule requiring basic emergency drugs; clarifies requirements for sedation permit renewal and reinstatement of an expired permit; and requires dentists to obtain 1 hour of continuing education related to the prescription monitoring program.

**IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES
PO Box 83720, Boise, ID 83720-0063**

24-0801-1601, Rules of the State Board of Morticians. (Temp & Prop) Extends the time period a Resident Trainee can hold a permit to practice from 2 to 3 years.

**IDAPA 27 – IDAHO STATE BOARD OF PHARMACY
PO Box 83720, Boise, ID 83720-0067**

27.01.01 - Rules of the Idaho State Board of Pharmacy.

***27-0101-1601, (*PH)** Includes specialty infusion clinics as venues for housing emergency medication kits; allows Idaho's Regional Behavioral Health Clinics to donate and receive donated medications to dispense to medically indigent patients; enables delegate access to the Prescription Monitoring Program; exempts investigational drugs from the products that necessitate registration as a prescriber drug outlet; and allows prescription medications to be labeled in the name of an authorized entity.

***27-0101-1602, (*PH)** Updates telepharmacy rules to allow streamlined registration of remote dispensing sites to applicants who meet certain criteria; broadens the technology that may be used at a remote dispensing site beyond just an Automated Dispensing System; removes requirement that a remote dispensing site be co-located with a medical care facility; removes requirement that business contracts be filed with the Board; updates limits on the oversight of multiple remote dispensing sites; and removes duplicative language.

***27-0101-1603, (*PH)** Allows pharmacists to delegate certain tasks to properly-trained, registered and certified pharmacy technicians under their supervision; expands verification technician programs beyond acute care hospitals; and enables remote data entry by certain pharmacy technicians.

***27-0101-1604, (*PH)** Updates security requirements for pharmacies; clarifies the provisions for legal medication returns for institutional pharmacies and to authorize collection for destruction; enables broader emergency room dispensing in conformance with a U.S. Supreme Court decision; enables pharmacists to better coordinate refills of medications to improve patient medication adherence; requires timely notification of medication errors that result in fatal outcomes; updates requirements for licensure applicants; clarifies prepackaged product labeling requirements; updates the list of required pharmacy references and pharmacy delivery restrictions.

**IDAPA 31 – IDAHO PUBLIC UTILITIES COMMISSION
PO Box 83720, Boise, ID 83720-0074**

31-4602-1601, Rules for Telecommunications Relay Services (TRS). Simplifies the Administrator's process for requesting proposals from TRS providers; reduces the number of advisory committee members assessing TRS providers' responses to the requests and reviewing the services provided by the selected providers; clarifies language and deletes obsolete references.

IDAPA 35 - IDAHO STATE TAX COMMISSION
PO Box 36, Boise, ID 83722-0410**35.01.03 - Property Tax Administrative Rules**

35-0103-1601, Eliminates requirement for the taxpayer to file more than one application in order to receive the homeowner's exemption; and demonstrates that the land and existing buildings are not eligible for the property tax exemption found in Idaho Code 63-602NN.

35-0103-1602, Increases the stratum for reporting the properties receiving the homeowner's exemption; after July 1, 2016, the maximum homeowner's exemption is \$100,000; deletes the reference to the House Price Index; instructs taxing districts on how to compute new construction amounts within urban renewal revenue allocation areas under newly enacted HB606aa (63-301A); outlines changes related to property tax budget certification and reporting requirements; explains how to handle solar farm gross earnings tax receipts when computing property tax budget; provides for treatment of money received from distribution of urban renewal allocations in excess of amount received to pay indebtedness and how to distribute this excess; provides for a notification process between the commission and counties for urban renewal agencies to tell the state tax commission whether or not a plan modification has occurred, describes acceptable methods of compliance and penalties for non-compliance.

35-0103-1603, Deletes the National Automobile Dealers Association Guides from rule and gives direction to the appraisers to value recreational vehicles at market value when the sales price is not known.

35-0103-1605, Incorporates by reference the latest versions of the Official Railway Equipment Register and removes two documents related to automobiles and van/truck conversion and limousine appraisals; and extends the time period that notices of correction for unintentional errors (under Section 63-810, Idaho Code) in erroneous levies will be received by the Commission.

IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT
PO Box 7129, Boise ID 83707-1129

39-0306-1601, Rules Governing Allowable Vehicle Size. Amends the rule to reference Idaho Code Section 49-1010 which sets limits for load overhang or the extension of a load.

39-0311-1601, Rules Governing Overlegal Permittee Responsibility and Travel Restrictions. Allows permitting for non-reducible and oversized loads to travel on U.S. 12 in northern Idaho between mileposts 74 and 174 if the load meets one of the following: 1) exceeds 16 feet wide and/or 150 feet in length; 2) load movement requires longer than 12 hours to travel through the designated mileposts; or 3) load movement requires physical modification of the roadway or adjacent vegetation to facilitate passage beyond normal highway maintenance.

39-0312-1601, Rules Governing Safety Requirements of Overlegal Permits. Requires that owner inspections of all overlegal permitted vehicles and special driver training for longer combination vehicles be done in accordance with federal regulations; brakes must meet and be maintained to federal regulatory standards; prohibits operation of vehicle or vehicle combinations with mixed brake systems between tractor and trailers.

39-0322-1601, Rules Governing Overlegal Permits for Extra-Length, Excess Weight, and Up to 129,000 Pound Vehicle Combinations. Requires brakes on all commercial motor vehicles to meet and be maintained to the Federal Motor Vehicle Safety Standards No. 121 in effect at the time of the commercial motor vehicle's manufacture; prohibits vehicle or vehicle combinations from operating with mixed brake systems between tractor and trailers; addresses federal driver training requirements.

39-0323-1601, Rules Governing Revocation of Overlegal Permits. Allows for the revocation of a permit for non-compliance if the motor carrier has violated an Out-of-Service order by the Federal Motor Carrier Safety Administration.

IDAPA 49 – BOARD OF VETERINARY EXAMINERS
PO Box 7249, Boise, ID 83707**46.01.01 - Rules of the State of Idaho Board of Veterinary Medicine**

46-0101-1601, Updates and clarifies continuing education requirements for certified veterinary technicians;

eliminates a requirement that a Board member must also be on the Committee on Humane Euthanasia; provides for when and where annual board meetings will be held.

46-0101-1603, (Temp & Prop) Establishes a procedure and fees for a certified veterinary technician to go on inactive certification status and back to active status.

IDAPA 48 – IDAHO GRAPE GROWERS AND WINE PRODUCERS COMMISSION

821 W. State St., Boise, ID 83702

48-0101-1601, *Rules of the Idaho Grape Growers and Wine Producers Commission*. (Temp & Prop) Requires both wineries and vineyards to pay assessments based on tons rather than on a gallon conversion.

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY

1410 N. Hilton, Boise, ID 83706-1255

58.01.01 - Rules for the Control of Air Pollution in Idaho.

58-0101-1601, Changes the percent of the ozone NAAQS, upon which no crop residue burning is allowed, from 75% to 90%.

58-0101-1604, Allows crop residue burning when ozone levels are not exceeding, or expected to exceed, 90% rather than 75% of the ozone NAAQS.

NOTICE OF PROCLAMATION OF RULEMAKING

IDAPA 06 – IDAHO DEPARTMENT OF CORRECTION

06-0102-1601, Rules of Correctional Industries (eff. 10/7/16)

NOTICE OF ADOPTION OF TEMPORARY RULE

IDAPA 27 – IDAHO STATE BOARD OF PHARMACY

27-0101-1605, Rules of the Idaho State Board of Pharmacy (eff. 8/3/16)T

NOTICES OF INTENT TO PROMULGATE - NEGOTIATED RULEMAKINGS

IDAPA 26 – IDAHO DEPARTMENT OF PARKS AND RECREATION

26-0120-1601, Rules Governing the Administration of Park and Recreation Areas and Facilities

Please refer to the Idaho Administrative Bulletin, **September 7, 2016, Volume 16-9**, for the notices and text of all rulemakings, public hearings schedules, information on negotiated rulemakings, executive orders of the Governor, and agency contact information.

Issues of the Idaho Administrative Bulletin can be viewed at adminrules.idaho.gov.

Office of the Administrative Rules Coordinator, Dept. of Administration, PO Box 83720, Boise, ID 83720-0306
Phone: 208-332-1820; Email: rulescoordinator@adm.idaho.gov

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

*Office of the Administrative Rules Coordinator
Idaho Department of Administration*

July 1, 1993 -- Present

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

This online index provides a history of all agency rulemakings beginning with the first Administrative Bulletin in July 1993 to the most recent Bulletin publication. It tracks all rulemaking activities on each chapter of rules by the rulemaking docket numbers and includes negotiated, temporary, proposed, pending and final rules, public hearing notices, vacated rulemaking notices, notice of legislative actions taken on rules, and executive orders of the Governor.

ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES (Index of Current and Active Rulemakings)

*Office of the Administrative Rules Coordinator
Idaho Department of Administration*

March 25, 2016 -- September 7, 2016

(eff. PLR) - Final Effective Date Is Pending Legislative Review And Approval

(eff. date)L - Denotes Adoption by Legislative Action

(eff. date)T - Temporary Rule Effective Date

SCR # - denotes the number of a Senate Concurrent Resolution (Legislative Action)

HCR # - denotes the number of a House Concurrent Resolution (Legislative Action)

(This Abridged Index includes rules promulgated before April 11, 2015 that are still in process and all current rulemakings promulgated after March 25, 2016 - Sine Die, 2015 Legislative Session.)

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01-0101-1601 Proposed Rulemaking, Bulletin Vol. 16-9

IDAPA 02 -- IDAHO DEPARTMENT OF AGRICULTURE***02.02.14, Rules for Weights and Measures***

02-0214-1601 Proposed Rulemaking, Bulletin Vol. 16-7

02-0214-1601 Adoption of Pending Rule, Bulletin Vol. 16-9 (eff. PLR 2017)

02.04.08, Rules Governing Grade A Milk and Milk Products

02-0408-1601 Proposed Rulemaking, Bulletin Vol. 16-7

02.04.14, Rules Governing Dairy Waste

02-0414-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7

02.04.15, Rules Governing Beef Cattle Animal Feeding Operations

02-0415-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7

02.04.16, Rules Governing Agriculture Odor Management

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02.04.18, Rules Governing CAFO Site Advisory Team

02-0418-1601 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 16-7

02.04.19, Rules Governing Domestic Cervidae

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02.04.31, Rules Governing the Stockpiling of Agricultural Waste

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02.06.12, Rules Pertaining to the Idaho Fertilizer Law

02-0612-1601 Proposed Rulemaking, Bulletin Vol. 16-7

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